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Children in Armed Conflict:

The Protection of Children

Rights in Armed Conflict

Master Thesis

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INTRODUCTION

Children have been fighting in various wars for many hundreds of years, so child soldiers are no new phenomenon. In recent decades, child soldiers have been more on display than in the past and there are probably a number of different reasons for this. One reason can be increasing legislation to protect children and increased reporting. With these international agreements the use of minors in armed conflict has been given an official definition. One factor can also be that the number of child soldiers has increased in recent years.¹

Developments in international law have raised the phenomenon of child warfare to global awareness, which has led to a changed role of the child in armed conflict. International agreements have created for the child the role of the victim and surrogate of the armed conflict, which must be protected from the horrors of war and violence. The main idea is to study the legal status of underage combatants from the perspective of international law and international criminal law. Specifically, those underage combatants who are used in armed conflicts. However, this does not remove the fact that a child may also be an active actor, a child soldier, in which case his or her legal status depends on the content of both international agreements on the rights of the child and international rules of war.

Children in Armed Conflict are clearly one of the most vulnerable groups anywhere in war zones. Their physical and psychological well-being is at risk. They are often unwillingly part of violence and aggression. The impact of armed conflict on children can have long-lasting consequences on their overall development.

One of the main ways that children are affected by armed conflict is through physical harm. Children are often used as soldiers or forced to work in military related works. In addition to physical harm, children in armed conflict can face psychological trauma`s. Stress and fear can have a significant impact on child`s mental health. Also lack of education is one of the key features which happens in war zones. Lack of education can have really long-term consequences for the children. Children who have experienced armed conflict can also have

¹ Child soldiers numbers doubled in the Middle East in 2019:
<https://www.mei.edu/publications/begin-children-child-soldier-numbers-doubled-middle-east-2019>.

difficulties learning mainly because they have experienced so many bad things that concentrating on school can be overwhelming. It is really important to understand what it means when we are talking about children in armed conflict. What are the reasons behind the negative effect on the children. How law sees children in armed conflict and what law can do to ease these situations. It is also important to understand how we can protect and support these children so that we can ensure their safety and give them tools so that they really can reach their full potential.

The main problems with children in armed conflict are diverse and difficult to remove altogether. First of all, killing and ill treatment of children is severe problem in armed conflicts all over the world. There are three main laws that concern children in armed conflict. These laws are international humanitarian law (IHL), international criminal law (ICL) and international human rights law (IHRL). While there is a lot of talk about killing and ill treatment of children who take part to the hostilities, but those children who are not taking part to the hostilities, their voices are not heard at least to the extent that it should.

The second major thing is recruitment and use of children in armed conflicts. It has proven very difficult to protect children from recruitment and use as a part of armed conflict. Main reasons could be that children can easily use some weapons and cause massive destruction, economic demands can be one reason, cultural mindset can also be one reason and military needs are one big reason because it is much cheaper for the army to use children then professional soldiers who had a long expensive military training.

Sexual violence against children in armed conflict is a severe and frequent problem. Today, sexual violence is even seen as one of the strategic tools of military conflicts.²

Child abduction is one serious form of child abuse in armed conflict. Usually, abducted children are used as part of the hostilities, for sexual exploitation, for forced labor or they can be used as a hostage.

² Almila. Sexual Violence Against Children in Armed Conflict. University of Helsinki. Helsinki 2022, p. 163-164.

Attacks on hospitals and schools are frequent events nowadays. These are severe violations under international criminal law and also by international humanitarian law. As a result of these attacks, children`s access to education and medical care becomes difficult or even impossible. Denial of humanitarian access and assistance is a crime against international humanitarian law but still this is happening to an increasing extent. Parties of armed conflict don`t give permit`s to humanitarian access to war zones.³

My objective to this thesis is to find out to what extent have international law and human rights obligations been effective in protecting the rights of children during armed conflict. In order to achieve my objective with the thesis I will explore the arguments through legal research about legal frameworks, some case studies and examine scholarly literature. I also go through conventions and treaties of international law that are related to my study. Mainly my legal sources include books, academic journals, databases, and official websites.

As today children in armed conflict is no new phenomena in world and especially in international law. Still over tens of thousands of children serve in different positions in various armed groups.⁴ So it is not a matter of ignorance or that it is some new phenomenon.

In my study the main thing is to understand what the biggest challenges and problem areas about children in armed conflict are. I need to study various legal instruments and human rights treaties that aim to protect the rights of children during armed conflict, so that I can have better understanding about the issue. I analyze the implementation of these legal frameworks in practice, examining the prevalence of child soldiering and the various forms of exploitation and abuse faced by children in armed conflict. It is also important to assess the effectiveness of existing measures for the protection of children`s rights during armed conflict, such as disarmament, demobilization, and reintegration programs. One of the key problem areas is also the use of child soldiers by non-state armed groups and the impact of displacement on children and their families. With the help of the aforementioned studies, the purpose is to find some answers so that the study could provide some recommendations for improving the protection

³ Fatima et al. Protecting Children in Armed Conflict. Oxford, Hart Publishing, 2018, p. 376-380.

⁴ UN name and shame list. All parties that violate children`s rights:

<https://watchlist.org/wp-content/uploads/20200420-watchlist-press-release-credible-list-report-final.pdf>

of children`s rights during armed conflict and trying to take into account both international legal obligations and practical considerations on the ground.

My research topic is based on the protection of fundamental and human rights and interpreting the relationship between the protection and limitation of human rights during armed conflict. That means that my study is part of international law and more precisely part of international humanitarian law, which is part of public international law.

The research questions are as follows; What measures can be taken to enhance the implementation and enforcement of international law and human rights obligations for the protection of children`s rights during armed conflict? What are the main obstacles to implementing and enforcement of international law? Should the laws change somehow so that there would be clearer legal status for child soldiers? And is the law really sufficient enough when we are talking about child soldiers and their position?

Main research question`s idea is to assess the effectiveness of international legal frameworks in protecting the rights of children during armed conflict. The research analyzes the implementation of the relevant legal instruments and examine the impact of these legal frameworks on the situation of children in armed conflict, taking into account such factors as the prevalence of child soldiering, the impact of displacement on children, and the challenges to disarmament, demobilization, and reintegration programs. So, the idea is to find out the strengths and weaknesses of international law and human rights obligations in protecting the rights of children in armed conflict.

The detailed question`s idea is to examine the challenges to the protection of children`s rights during armed conflict and aim to identify practical measures that could be taken to improve the implementation and enforcement of international law and human rights obligations. The research examines the role of international regional organizations, governments, and civil society in protecting the rights of children in armed conflict.

Law research typically involves a variety of methods. These methods can be combined and adapted to address specific research questions and to provide a comprehensive understanding of legal issues. In some cases, interdisciplinary methods may be used to gain a broader perspective on the issue.

Main methods that are in use in law research are statutory interpretation which involves the examination of legislation to determine the meaning and intent of the law, case law analysis which involves the study of court cases and judicial decisions to understand how laws have been applied in practice, comparative law which is a method to compare laws in different countries to understand similarities and differences and to identify best practices, historical research is the study of the history and development of laws, including the evolution of legal principles and the context in which laws were created, interpretive analysis involves a critical examination of legal texts and doctrines to identify underlying assumptions ideologies that shape law, empirical research involves the use of quantitative and qualitative methods to collect and analyze data to gain insights into the impact of laws and legal institutions on society, legal philosophy is the study of the underlying principles and values of the law, including issues of justice, fairness and human rights, and discourse analysis which is a critical examination of the language and discourse used in legal texts and debates to understand how they shape law and legal practices.⁵

In my study the main method that I use is interpretive analysis where the main idea is to critically examine legal text and doctrines and to find out and understand the assumptions and ideologies that shape law. More specifically I use mainly teleological interpretation which is a method of legal interpretation that focuses on the purpose or intention behind law. This method considers the goals or objectives that the law was intended to achieve, rather than simply looking at the text of the law itself.

Teleological interpretation is often used in cases where the text of law is unclear or ambiguous, and the court needs to determine the intended meaning. In these cases, the court will consider the purpose or intent behind the law and how it relates to the broader legal framework and social

⁵ Hirvonen. Mitkä metodit? Helsinki, Yleisen oikeustieteen julkaisu 17, 2011, p. 5–61.
https://helda.helsinki.fi/bitstream/handle/10138/225264/hirvonen_mitka_metodit.pdf?sequence=1&isAllowed=y.

context. Teleological interpretation can also be used to identify gaps in the law or to suggest changes in the law to better achieve its intended purpose. This method can provide a more nuanced and flexible approach to legal interpretation as it allows us to consider the context and circumstances in which the law was enacted and to adapt the law to changing social and legal conditions.

Legal realism examines the validity of legal norms through their social significance. It emphasizes the role of social, economic, and political factors in shaping the law and legal decision-making. It maintains that law is not a set of abstract principles that can be deduced from the text of legal codes, but rather a practical and dynamic tool that is shaped by the changing needs and values of society. Legal realists believe that the law is created not by judges interpreting the text of statutes and precedents, but rather by their making decisions in light of the social, economic, and political context in which they operate. With this idea it means that law is constantly evolving. Legal realism is a theoretical approach to the study of law, rather than a specific research method. However, it does inform and shape the way in which legal research is conducted. The legal realist approach emphasizes the need for nuanced and context-sensitive understanding of the law, and it encourages adopting a flexible and interdisciplinary approach. The legal realist income angle fits the ones presented in the study for examining and considering the practical application of legal norms.⁶

Chapter one starts with the information about International Law and legal instruments which concerns my study. The idea of chapter one is to get knowledge about legal instruments, the difference between international armed conflict and non-international armed conflict, I also go through what means vulnerable groups and persons, who they are and how international law sees their status and lastly I start with core idea of my thesis, what are rights of the child, what that means for children, who law sees this group and what special legal instruments concern them.

Chapter two main question is about general principles of international law. I will examine judiciary systems, go through different court systems in the international law field, and then I

⁶ Hirvonen. Mitkä metodit? Helsinki, Yleisen oikeustieteen julkaisu 17, 2011, p. 5–61:

https://helda.helsinki.fi/bitstream/handle/10138/225264/hirvonen_mitka_metodit.pdf?sequence=1&isAllowed=y

Husa, Mutanen and Pohjolainen. Kirjoitetaan Juridiikkaa. Tampere, Esa Print Oy, 2008, p. 18-23.

will finish this chapter with three different kind court case which concerns child soldiers and analyze these cases.

Chapter three is about the problems and concerns of children who liv in conflict areas. I will go through some statistics to find out how big phenomena child soldiers and children in armed conflict really is. Then I examine the effectiveness and of International Law and Human Rights obligations regarding my thesis topic. Lastly in chapter three I analyze the way forward, what we should develop and how we should do it. After chapter three is the conclusion where I summarize my work, the things that I study in my work and possible development proposals for the future.

1. INTERNATIONAL LAW AND LEGAL INSTRUMENTS

We can think of International Law as the main branch and there are little bit smaller branches that include under International Law in the time of war. These smaller branches which are somehow related are Human Rights Law, International Humanitarian Law, Refugee Law, and International Criminal Law.

In many cases it is said that founding document of International Human Rights Law is the Universal Declaration of Human Rights which was adopted 10 December 1948.⁷ Later in 1966 UN General Assembly adopted two international treaties which were called the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights. Together these three make up International Bill of Human Rights which we can see as the main Human Rights Charters.⁸

International Humanitarian Law basically gives guidance and set out of rules to limit the damages caused by the war. Key elements include protection of the non-combatants this includes also former combatants such as prisoners of war, wounded etc. Distinction principle is also one of the key elements in Humanitarian Law. It means that fighters must distinguish between civilian and military objectives. Proportionality principle means that combatants must avoid collateral damage. When attacking they must take measures to avoid civilian casualties and also avoid destroying civilian targets if possible. These restrictions aim to reduce suffering and to respect humanitarian principles and rules of war. International Humanitarian Law enters into force at the stage when hostilities begin. So, it has nothing to do with ending military action. Other laws and agreements apply to it.⁹

⁷ Universal Declaration of Human Rights:

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁸ International Covenant on Economic, Social and Cultural Rights:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

International Covenant on Civil and Political Rights:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁹ Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge, Cambridge University Press, 2019, p. 3-26.

International Humanitarian Law is a set of rules and principles that regulate the conduct of armed conflict. It aims to limit effects on armed conflict and make the distinction what is permitted and what is not. From the beginning the law of war was actually based on entirely customary principles but later on it has established and has become increasingly the object of international treaties adopted by states in international conferences. Main legal constraints that law of war regulates are hostilities in general, conduct of armed forces especially in combat, behaviour of civilian authorities and persons of war, behaviour towards persons and objects in war, occupied territories status and relations between belligerent states and neutral states. If there are some areas that are not covered by treaty law still the civilian persons and combatants has the protection from the principles of international law and these principles are based on established custom, the principles of humanity and the dictates of public conscience.¹⁰

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International Criminal Law`s main idea is to govern the rights and obligations of the States. Its origins are relatively recent if we think of it as we know it nowadays. First concrete steps were establishment of the ad hoc tribunals in former Yugoslavia and Rwanda in 1990s. There are main international crimes that have been given jurisdiction under general international law and which are under the influence of international courts or tribunals. These crimes are genocide, crimes against humanity, war crimes and the crime of aggression. There are also a lot of other

¹⁰ De Mulinen. Handbook on the Law of War for Armed Forces. International Committee of the red Cross. Geneva 1987, p. 2-4.

¹¹ Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge University Press. Cambridge 2019, p. 259-296.

international crimes such as piracy, slavery, torture etc. States are usually parties to different treaties which give states obligation to criminalize these actions in their domestic law.¹²

Key legal documents of refugee law are Refugee Convention from 1951 and its Protocol from 1967 and The Declaration on Refugees and Migrants which was adopted in September 2016.¹³ Main idea is to respect the human rights of refugees and migrants, refugee protection, support for the countries who shelter the refugees, expand third-country solutions, supporting the refugee's origin countries and ease the pressure of host countries. Refugee laws core principle is non-refoulement which means that refugee should not be returned to a country where his life could be in danger.¹⁴

1.1 International Armed Conflict and Non-International Armed Conflict

We can divide armed conflicts in two main categories. There are International Armed conflicts which are conflicts between two or more states and Non-International Armed Conflict where conflict is inside one state and usually between government and some insurgency group.¹⁵ In both of these cases International Law regulates the action. Geneva Convention and its Additional Protocols are used to think as rules of war. First Geneva Convention protects wounded and sick, second Geneva Convention protects wounded, sick, and shipwrecked, third Geneva Convention applies to prisoners of war, fourth Geneva Convention gives protection to civilians, Additional Protocol I is about international conflicts, Additional Protocol II deals with non-international conflicts and Additional Protocol III is about creating additional distinctive emblem.¹⁶ While the earlier idea was that international law of armed conflict is different from

¹² Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge, Cambridge University Press, 2019, p. 3-26.

¹³ A guide to international refugee law made by UN:
<https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>

¹⁴ The 1951 UN Refugee Convention:
<https://www.unhcr.org/1951-refugee-convention.html>.

¹⁵ Typology of armed conflicts in international humanitarian law: Legal concepts and actual situations:
[Typology of armed conflicts in international humanitarian law: legal concepts and actual situations \(icrc.org\)](https://www.icrc.org/typology-of-armed-conflicts-in-international-humanitarian-law-legal-concepts-and-actual-situations).

¹⁶ First Geneva Convention:
<https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949>

Second Geneva Convention:
<https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949>

Third Geneva Convention:

non-international conflicts, this has change somehow already in 1977 when Geneva Convention adopted Article 1 of Protocol I idea that if the conflict is a part of national liberation movement then law of armed conflict really do apply.¹⁷ It is important to notice the distinction between international armed conflict and non-international armed conflict. This distinction affects the legal framework that applies each conflict. While both types of conflict are subject to certain basic humanitarian rules, international armed conflicts are subject to more comprehensive and detailed set of rules under international humanitarian law, including the possibility of war crimes prosecution by international tribunals, while non-international armed conflicts are subject to more limited legal protections.

Laws that govern warfare can be violated without it automatically means that war crimes had happened. Usually, we can talk about war crime if the violation concerns a rule of International Humanitarian Law, that rule is also a customary law or treaty law, violation must be serious (how understand serious and how it is defined), and the individual must be held in criminally liable for the violation.¹⁸

Lex specialis derogate lex generali rule plays significant role in regulating warfare. This rule provides for a special law to bypass the ordinary law.¹⁹ During an armed conflict, the relationship between international humanitarian law and human rights can be a bit challenging. Right to life is one of the key principles in Human Rights but International Humanitarian Law authorizes derogation from this provision. If we think about situation in war time, then the applicable law is international humanitarian law and as we can see it is special law. Usually, the rule is that special law bypass ordinary law. However, this rule does not obviate the fact that States are still obliged to comply with the obligations of international agreements if they

<https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949>

Fourth Geneva Convention:

<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

Geneva Convention Additional Protocol I:

<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>

Geneva Convention Additional Protocol II:

<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977>

Geneva Convention Additional Protocol III:

<https://ihl-databases.icrc.org/en/ihl-treaties/apiii-2005>

¹⁷ Green. *The Contemporary law of Armed Conflict*. Manchester, Manchester University Press 2008, p 66-75.

¹⁸ Cryer, Robinson, and Vasiliev. *An Introduction to International Criminal Law and Procedure*. Cambridge, Cambridge University Press, 2019, 259-269.

¹⁹ International Law Commission, Study group on Fragmentation, Koskenniemi:

https://legal.un.org/ilc/sessions/55/pdfs/fragmentation_outline.pdf

have previously done so. In time of war States can restrict people's rights in accordance with international law. Usually, these restrictions are for their own good. Usually, the collision between International Humanitarian Law and Human Rights comes in time of armed conflict. Lex Specialis rule does not mean that states can then forget the Human Rights. Best alternative in these situations is that if states could apply both systems without having to repeal the other in its entirety. Today, human rights play such a strong position, so it may also help the parallel use of the two system.²⁰

One example about prohibited warfare is the starvation of civilians as a method of warfare. So, in these cases food is the real weapon.

Geneva Convention Article 54(1) of the 1977 Additional Protocol I States that "Starvation Of civilians as a method of Warfare is Prohibited",²¹

Geneva Convention Article 14 of the 1977 Additional Protocol II States that "Starvation of civilians as a method of combat is prohibited",²²

ICC Statute 1998 Article 8(2)(b)(xxv) states that "Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under Geneva Conventions, constitutes a war crime in international armed conflicts",²³

There are also other instruments that regulate starvation as a use of warfare. Lieber Code 1863,²⁴ Report of the Commission on Responsibility 1919,²⁵ Memorandum of Understanding on the Application of IHL between Croatia and the Socialist Federal Republic of Yugoslavia 1991,²⁶

²⁰ Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge, Cambridge University Press, 2019, p. 3-26.

²¹ Geneva Convention Additional Protocol I, Article 54(1):
<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-54>

²² Geneva Convention Additional Protocol II, Article 14:
<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-14>

²³ Rome Statute of the International Criminal Court:
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

²⁴ General Orders No. 100: Lieber Code:
https://avalon.law.yale.edu/19th_century/lieber.asp.

²⁵ Report of the Commission on the Responsibility of the Authors of The First World War and On Enforcement of Penalties:
<https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1917&context=ils>.

²⁶ Yugoslavia/Croatia Memorandum of Understanding of November 27, 1991:
<https://www.peaceagreements.org/viewmasterdocument/1454>.

Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina 1992,²⁷ UNTAET Regulation No. 2000/15²⁸ and several military manuals from different countries.²⁹

Killing civilians in armed conflict is in principle prohibited. Lieber Code regulates already about this from 1863, Nuremberg Tribunal charter and it is important to understand and know that already in 160 years ago international community started to regulate acts in armed conflict.³⁰ stated that it is a war crime to kill or murder civilians, Common Article 3 of the Geneva Convention prohibits violence to life of civilian persons, all four Geneva Convention list willful killing of protected persons as a grave breach, Additional Protocols I and II prohibits murder, ICC Statute says that murder is a war crime³¹ and also the Statutes of the International Criminal Tribunals for the former Yugoslavia³² and for Rwanda³³ and of the Special Court for Sierra Leone³⁴ regulates it same as ICC. Also, numerous military manuals prohibit killing civilian and protected persons.

Medical personnel must be protected in all circumstances, this rule can be found in the First, Second and Fourth Geneva Convention. Humanitarian relief personnel must be protected by Article 71(2) of Additional Protocol I. Humanitarian relief operations must be protected by the rule of Additional Protocol I under the Statute of the ICC. Directing an attack against a zone

²⁷ Former Yugoslavia, Special Agreements between the Parties to the Conflicts:

<https://casebook.icrc.org/case-study/former-yugoslavia-special-agreements-between-parties-conflicts>.

²⁸ Regulation NO. 2000/15, On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences:

<https://www.legal-tools.org/doc/c082f8/pdf/>.

²⁹ International Humanitarian Law Databases, Military Manuals:

https://ihl-databases.icrc.org/customary-ihl/eng/docs/src_iimima.

³⁰ Agreement for the prosecution and punishment of the major war criminals of the European Axis. Signed at London, on 8 August 1945:

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf.

³¹ Rome Statute, Article 7(a) and 8(c)(i):

<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

³² United Nations International Criminal Tribunal for the former Yugoslavia:

<https://www.icty.org/>.

³³ United Nations International Residual Mechanism for Criminal Tribunals:

<https://unictr.irmct.org/>

³⁴ Residual Special Court for Sierra Leone:

<http://www.rscsl.org/>.

established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited by the First and Fourth Geneva Convention.³⁵

Women and children belong to a group that needs a special protection set by (Geneva Convention I, II, III, IV and Additional Protocol I women) and Geneva Convention IV, Additional Protocol I and II.³⁶

International Humanitarian Law still has its place in modern armed forces conflict. International Humanitarian Law is criticized for its antiquity and difficulty in applying it modern armed conflicts. Reason for this is that world has changed quite drastically compered the time when these contracts were drawn up. Armed conflict requires certain exceptions to normal peacetime legislation, particularly with regard to respect for Human Rights. In these situations, it is important that we have International Humanitarian Law. International Humanitarian Law also contains fundamental rights and human rights in itself protective legal principles. For example, the parties to an armed conflict will hopefully respect all binding international human rights treaties, also in time of the conflict. In practice, this means applying binding provisions that provide the highest level of protection for civilians, for example.

1.2 Vulnerable groups and persons

The protection of the human rights of vulnerable groups and persons is a fundamental principle in many societies. Vulnerable groups and persons include, but are not limited to, children, persons with disabilities, refugees and asylum seekers, ethnic and religious minorities, and women. The protection of their rights is essential to ensure they are treated with dignity, respect, and equality, and they have access to the same opportunities as others. This can be achieved through laws, and policies, as well as through the work of human rights organizations and advocacy groups.

³⁵ The Geneva Conventions and their Commentaries:

<https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>.

³⁶ Ibid.

The protection of the human rights of vulnerable groups and persons during times of war is particularly important as these individuals are often at greater risk of harm and abuse. International humanitarian law provides special protection for vulnerable groups during armed conflict. These protections include example the prohibition of attacks on civilian population and civilian objects, the prohibition of torture, cruel or inhumane treatment, and acts of violence against persons taking no active part in the hostilities, the prohibition of forced displacement of civilians, the protection of prisoners of war and persons deprived of their liberty, and the protection of the rights of women and children.³⁷

However, it is important to note that despite the legal protections in place, vulnerable groups and persons often face violations of their human rights during armed conflict. This highlights the need for ongoing efforts to ensure that these laws are respected and upheld, and accountability is established for those who commit violations. International humanitarian organizations and non-governmental organizations also play a vital role in providing assistance and protection to vulnerable groups during armed conflicts. They often provide medical aid, food and shelter, and other forms of assistance to those affected by the conflict, as well as working to document and report human rights abuses.

Despite the legal protections in place, armed groups and state actors often fail to respect and comply with these laws, leading to widespread human rights abuses against vulnerable groups. Usually those who commit human rights abuses during armed conflicts often do so with impunity, as there are often few mechanisms in place to hold them accountable. This lack of accountability can perpetuate a culture of abuse and undermine the effectiveness of international humanitarian law. Also, vulnerable groups are often disproportionately affected by armed conflicts and may face specific forms of abuse and exploitation. They may also have limited access to protection and assistance. During armed conflicts, humanitarian organizations, and NGO`s often face challenges in accessing affected areas and providing assistance to those in need. This is due to lack of security, bureaucratic obstacles, and restrictions imposed by parties to the conflict. one main problem is also that international humanitarian laws mainly

³⁷ Bantekas and Oette. *International Human Rights, Law and Practice*. Cambridge University Press. Cambridge 2020, p. 577-616.

focus on the protection of human rights during armed conflict between states, but with the increasing number of non-state actors, such as terrorist groups, criminal gangs, and militias, the human rights protection is not guaranteed. So, as we can see the need for continued efforts to ensure compliance with international humanitarian law, establish accountability for human rights abuses, and improve access to protection and assistance for vulnerable groups and persons during armed conflict is vital.³⁸

1.3 Rights of Child

Universal declaration of human rights says: “All human beings are born free and equal in dignity and rights.” In same declaration article 19 says: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.³⁹

And article 22 continues: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.⁴⁰

So, as we see the universal declaration of human rights sets the ground rules of human rights. All countries should have taken this declaration as their principle but in real life the situation is not so clear.

³⁸ Bantekas and Oette. International Human Rights, Law and Practice. Cambridge University Press. Cambridge 2020, p. 577-616.

³⁹ Universal Declaration of Human Rights:
[Universal Declaration of Human Rights | United Nations.](#)

⁴⁰ Ibid.

There are many different culturally based countries in world. That means that even though every country has promised to follow the principles of declaration of human rights, it doesn't mean that every single country has taken same steps to follow the principles.

Declaration of the Rights of the Child was adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959. It states:

“Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, Whereas the need for such special safeguards has been stated in the Geneva Declaration of Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children, Whereas mankind owes to the child the best it has to give.”⁴¹

The UN General Assembly adopted Convention on the Rights of the Child and opened it for signature on 20 November 1989 and it came into force 2 September 1990. Totally 196 countries are member in that treaty, only one UN member state has not ratified the treaty and it is the United States. Nations that have ratified this convention are bound to it by international law. Convention on the Rights of the Child is the most widely ratified human rights treaty in the world.⁴²

Convention on the Rights of the Child Article 38 lays down basic rules for the children in armed conflict. It points out that States cannot recruit persons under fifteen years old to armed forces. Same Conventions Optional Protocol which entry into force 12 February 2002, requires States to raise minimum age of persons who join the army from fifteen years to closer to eighteen years. Also, in this Optional Protocol it is stated that people under eighteen years old should not take part in direct hostilities.⁴³

⁴¹ Declaration of the Rights of the Child:

<https://www.humanium.org/en/text-5/>

⁴² Convention on the Rights of the Child:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁴³ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC). OPAC is supplementary treaty to the Convention on the Rights of the Child that sets out specific measures to protect children from being recruited or used in armed conflict. It requires states to take all feasible measures to ensure that children under the age of eighteen do not take direct part in hostilities, and it prohibits the recruitment and use of children under the age of fifteen in any armed force or group.⁴⁴

The official definition of child soldiers was agreed in 1997 in Cape Town as a result of the symposium. The organizers of the symposium were United Nations Children Organization, UNICEF, and some non-governmental organizations. According to the principles of this symposium, any person under eighteen years of age can be considered as a child soldier. These persons can participate voluntarily or forcibly in the armed forces or otherwise activities of an armed group. In addition to armed action, child soldiers may be on duty which include activities such as catering, or acting as courier, maintenance, or other support tasks. These persons could also be forced in marriage or sexual purposes. Child soldiers are not just those who carry weapons, but also minors otherwise support the activities of armed groups.⁴⁵

The legal status of the child when participating in armed conflict is not complete unequivocal, and the status of the child involved in fighting varies in various international agreements notably. As agreements evolve on children`s rights, this means that more attention is paid for children place in armed conflict also. By the year 1998 it was clear that recruitment of the children under fifteen years old to armed forces was universally recognised as war crime.⁴⁶ Although the definition of a minor has been universally proclaimed and widely ratified, the use of persons under the age of eighteen in the armed force was still permitted until the turn of the previous millennium. If we look at the agreements on International Humanitarian Law in their entirety, one can state that no agreement prohibits a child from acting as legal fighter. The recommendations of international agreements only apply to the recruitment and use of children in part of combat operations. So, we can assume that according to International Humanitarian Law, a minor between 15-17 years may be considered a legal fighter if he or she meets the

⁴⁴ Ibid.

⁴⁵ Cape Town Principles:

<https://openasia.org/en/wp-content/uploads/2013/06/Cape-Town-Principles.pdf>

⁴⁶ Bantekas and Oette. International Human Rights, Law and Practice. Cambridge University Press. Cambridge 2020, p. 556-559.

requirements for a combatant. As a combatant, a child soldier is entitled to all the rights to assigned to a combatant in accordance with the International Humanitarian Law and in this case child soldier is also a legitimate target for the use of force. Other child soldiers who do not participate directly in combat missions are continuing to be entitled to civilian protection status and should be treated accordingly taking into account the protection of children`s rights.⁴⁷ Official child soldiers or combatants must be kept separate from child terrorists, who are in a way their own subclass in this genre. The Convention on the Rights of the Child does not actually prohibit the criminalization of the acts of a child soldier, but it has not set any age limit for it.⁴⁸ International Humanitarian Law to take a stand the sentencing of minors only by stating in Geneva Convention IV Article 68 that death penalty may not be pronounced against person who as under eighteen in time of the offence.⁴⁹

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict main idea is to prohibit the forced and compulsory recruitment of children under 18 years old. It is important to notice that while the protocol prohibit the forced and compulsory recruitment it permits the voluntary enlistment of children under 18 years old. The protocol sets limits to voluntary enlistment, so it must be truly voluntary, children must be sixteen or over, parents or legal guardians must accept the enlistment, the person must be fully informed about his duties and the age must reliable proofed before enlistment.⁵⁰

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict states that child must be sixteen or over if like to enlist voluntary to the armed forces. Convention of the Rights of the Child states that recruiting children under 15 years is not aloud.

⁴⁷ Captured Child Combatants: 31.10.1990 Article, International Review of the Red Cross, No. 278, by Maria Teresa Dutli:

<https://www.icrc.org/en/doc/resources/documents/article/other/57jmea.htm>

⁴⁸ UNICEF Article: How we protect children`s rights with the UN Convention on the Rights of the Child:

<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

⁴⁹ Geneva Convention (IV) Article 68:

<https://ihl->

[databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=0950951523E3DCADC12563CD0051BF3E](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=0950951523E3DCADC12563CD0051BF3E)

⁵⁰ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict:

<https://childrenandarmedconflict.un.org/tools-for-action/optional-protocol/>

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War was adopted 12 August 1949 and entry in force 21 October 1950. In this Convention's article 50 are basic rules for the protection of the children in armed conflict. There is example stated occupying powers responsibilities towards children, especially care and education of children. Also enlisting children is denied. In additional protocol 1. from 1977 Article 77 determine the age limit for recruiting and taking part in direct hostilities. Children under fifteen years are protected against these measures. Children from fifteen to eighteen years are still children and when recruiting them priority to the oldest must set.⁵¹

Additional Protocol II from 1977 Article 4(3)(c) explicitly states that:” children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”⁵²

So, there is a small difference between these Conventions, but the basic idea is the same. Why it is so? Does this violate children right to decide their own affairs. Well, it might be so, but it is seen that they are not develop enough to decide about such things that should they enlist armed forces or not. Much of this is because they do not have necessary capability to take part in military life. They don't have the necessary physical capability or psychological maturity. One argument is also that children are not ready to comply with international humanitarian law, so they are not capable to act as combatants should, taking into account possible individual criminal responsibility. One other important aspect is that when child turns 18 years it is that day when he or she could be enlisted forcibly without any protection from law. So, the issue is should there be real right not to be fight at all?⁵³

European Union has published a statement which is called EU Guidelines on Children and Armed Conflict. In This publication EU take a strong stand about child protection in armed

⁵¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I), 8 June 1977:

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470>

⁵² Additional Protocol II from 1977 Article 4(3)(c):

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD0051E783>

⁵³ Happold M. Child Soldiers in International Law. Manchester University Press. Manchester 2005, p 29-33.

conflict. In this text EU states that promotion and protection of all children is priority concern of the EU.⁵⁴

In Charter of fundamental rights of the European Union⁵⁵, EU countries have stated many fundamental rights that countries have to offer to its citizens without any demands. Law is the main help to manage conditions inside EU and inside every single EU state. All EU countries have same standards which come from universal declaration of human rights and fundamental rights of EU. National legislation and policies differ inside EU states. EU countries want to offer all its citizens unified rights, regardless of people's origin. Then we talk about social cohesion approach. Its ground rules are to offer everyone the same treatment in the same situation.

Charter of the Fundamental Rights of the European Union was ratified 7 December 2000. Article 24 express Rights of the Child. It states:

“Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.”⁵⁶

African Charter on the Rights and Welfare of the Child entry into force November 1999. In this Charter Article 2. it is stated that every human being under eighteen years is considered as a child. An Article 22 lay down rule that every state must take all necessary actions that no child would be taken part in direct hostilities.⁵⁷

⁵⁴ EU Guidelines on Children and Armed Conflict:
[01_hr_guidelines_children_en_1.pdf \(europa.eu\)](#)

⁵⁵ Charter of the Fundamental Rights of the European Union:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

⁵⁶ Ibid.

⁵⁷ African Charter on the Rights and Welfare of the Child:
[36804-treaty-african charter on rights welfare of the child.pdf \(au.int\)](#)

Worst Forms of Child Labour Convention No. 182 adopted June 1999. This is an International Labour Organizations decision which was made in 87 sessions of the Organization. In this Convention Article 3a it is stated that one of the worst forms of child labour is using children in armed conflict and it is completely prohibited action. It requires states to take immediate and effective measures to eliminate the worst forms of child labour, this includes also the use of children in armed conflict.⁵⁸

Rome Statute of the International Criminal Court adopted July 1998. Rome Statute Article eight is concerning war crimes. In this article 8(2)(e)(vii) it is stated that enlisting children under fifteen years old into armed forces and use them into the hostilities is a war crime. Article 8(2)(b)(xxvi) also contains an additional restriction what was already stated in article 8(2)(e)(vii) but there is clear distinction because it only applies recruitment into national armed forces. This “national” word restriction in my opinion is not compatible with the general principles of humanitarian law.⁵⁹

Usually there are many different layers of law, especially when we are talking about countries in Europe. We do have a fundamental rights in National level, fundamental rights of the European Union and international human rights.⁶⁰ There are a lot of fundamental rights which are related to children rights and especially when we are talking about fundamental and human rights in the debate for the legal status of the child soldiers.

There are two main principles in the human rights which are stepping up in child welfare issues. Principle of child interest is the first one. Second one is protection of private and family life. Both of these are especially important human rights issues. Main principle in child welfare is child`s interest. So, it can be possible that when you are thinking best interest of the child you may have to ignore protection of family and private life. So, there may be some tension between these two main principles. There are also so called three P`s program which is based on protection, provision, and participation. This program claims that children must have special

⁵⁸ Worst Forms of Child Labour Convention, 1999 (No. 182):
[Worst Forms of Child Labour Convention, 1999 \(No. 182\) | OHCHR](#)

⁵⁹ Rome Statute of the International Criminal Court:
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

⁶⁰ Finnish Ombudsman Official Statement about Human Rights:
https://www.oikeusasiamies.fi/en_GB/web/selkosuomi/what-are-fundamental-and-human-rights-

protection, children are entitled to just share of societies economic resources and children must guarantee a possibility to take part of decision making which affect them.⁶¹

Human dignity is one of the fundamental rights and also one of the concepts which is widely used. It is also stated in EU Charter of Fundamental Rights in Title 1 Dignity, Article 1 Human Dignity:

“Human Dignity is inviolable. It must be respected and protected.”⁶²

This is a strong statement. Human dignity can also be understood as meaning that its content is in fact determined by other human rights.

The right to self-determination is one of the rights that is key concept. Self-determination is a core principle in international law, and it arises from customary international law. Self-determination is also defined in several international treaties, example International Covenant on Civil and Political Rights in Article 1, where it is stated that all people have right of self-determination⁶³, UN Charter Article 1, where it is stated that nations relations are based on respect of equal rights and self-determination of peoples⁶⁴ and African Commission on Human and People`s Rights Article 20/1 it is stated that all people have unquestionable right to self-determination.⁶⁵ Self-determination in the eyes of international law has been seen as belonging to groups and has created problems when individuals seek justice on the basis of self-determination. this has led the situation that there is no universal definition about self-determination and what it really means in different circumstances.⁶⁶

Right to life is one of the most fundamental rights because without life other human rights cannot be realized either.⁶⁷

⁶¹ Taskinen Sirpa. Lastensuojelulain soveltaminen. WSOY. Helsinki 2010, p. 23–24.

⁶² Charter of Fundamental Rights of the European Union (2012/C 326/02):
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

⁶³ International Covenant on Civil and Political Rights:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁶⁴ United Nations Charter:
<https://www.un.org/en/about-us/un-charter/chapter-1>

⁶⁵ African Commission on Human and People`s Rights:
<https://www.achpr.org/legalinstruments/detail?id=49>

⁶⁶ Smith, Rhona, K. M. International Human Rights. Oxford University Press. Oxford 2014, p. 290.

⁶⁷ Smith, Rhona, K. M. International Human Rights. Oxford University Press. Oxford 2014, p. 217.

There is a positive obligation on States to protect life, this is agreed in many international covenants and usually also in states own constitutions. This positive obligation also includes proper healthcare so that states can guarantee that they have adopted necessary measures to really protect life.⁶⁸

There are also many other human rights that concern the debate around the matter. Freedom from torture and inhuman treatment could be easily used to defend the rights of the child soldiers. Societies are evolving and also the laws must evolve alongside society, if that is not happening soon, we have a lot of laws that are not really working.⁶⁹

Protection of private and family life is one of the rights that is related to the topic.

Freedom of thought, conscience and religion Article 9 in European Convention on Human Rights also includes rights that are important in discussion about children rights.⁷⁰

So, as we can see there are numerous treaties and agreements concerning children in armed conflict. In this chapter I just went through most important ones. There are examples security council's resolutions, resolutions by the general assembly, statutes of international tribunals, different regional instruments, and national legislations.

⁶⁸ Smith, Rhona, K. M. International Human Rights. Oxford University Press. Oxford 2014, p. 219.

⁶⁹ Smith, Rhona, K. M. International Human Rights. Oxford University Press. Oxford 2014, p. 235-249.

⁷⁰ European Convention on Human Rights

https://www.echr.coe.int/documents/convention_eng.pdf

2. GENERAL PRINCIPLES OF INTERNATIONAL CRIMINAL LAW

General principles of law play an important role in the decisions of international criminal courts and tribunals. These principles are used to fill gaps in international criminal law or to supplement existing rules, particularly in cases where there is no explicit provision in international criminal law. Examples of general principles of law that have been applied in the decisions of international criminal courts and tribunals include the principle of individual criminal responsibility, the principle of legality, the principle of non-retroactivity of criminal law, and the principle of fair trial. These principles have been developed through the common legal systems of various countries and are widely accepted as fundamental concepts of justice and fairness. However, the application of general principles of law in international criminal law is subject to certain limitations, including the need to ensure consistency with other sources of international law, including customary international law and international treaties. The use of general principles of law in the decisions of international criminal courts and tribunals is also subject to the principle of legality, which requires that criminal liability and punishment can only be imposed for conduct that was criminal under the law at the time it was committed.⁷¹

The principle of legality is a fundamental principle of law that requires that individuals can only be punished for conduct that is clearly prohibited by law, and not for conduct that is not explicitly prohibited. This principle is based on the idea that people should have a clear understanding of what behavior is prohibited by law, and they should not be punished for conduct that was not considered criminal at the time it was committed. The principle of legality is enshrined in numerous international and domestic legal systems and is considered a key component of the rule of law. It is particularly important in criminal law, where it serves as a safeguard against arbitrary or retroactive application of criminal law. Under the principle of legality, criminal offenses must be clearly defined by law, and individuals must be given notice of what conduct is prohibited. Additionally, the principle of legality requires that criminal offenses be interpreted narrowly, and that any ambiguity in the law be resolved in favor of the defendant.⁷²

⁷¹ Raimondo F. *General Principles of Law in the Decisions of International Criminal Courts and Tribunals*. Martinus Nijhoff Publishers. Leiden 2008, p. 1-4.

⁷² Robertson G. *Crimes Against Humanity*. The New Press. New York 2013, p. 110-121.

The principle of individual criminal responsibility is one of the key principles in international criminal law. It holds that individuals can be held accountable for crimes under international law, regardless of their capacity or the context in which the crimes were committed. Under this principle, individuals can be held responsible for committing international crimes such as genocide, crimes against humanity, war crimes, and aggression. This includes not only soldiers and other individuals who commit crimes on the battlefield, but also leaders and officials who order or facilitate such crimes. Individual criminal responsibility is a cornerstone of the international criminal justice system, and it has been established through several international legal instruments, including the Rome Statute of the International Criminal Court and the Geneva Conventions. The principle of individual criminal responsibility is also recognized as a customary norm of international law, meaning that it is binding on all states even if they have not ratified specific treaties. The importance of individual criminal responsibility is that it helps to ensure accountability for the most serious crimes under international law, promotes respect for human rights and the rule of law, and serves as a deterrent against future crimes.⁷³

The principle of non-retroactivity holds that no person should be punished for an act that was not a criminal offence under the law at the time it was committed. This principle is based on the idea that individuals and organizations should not be held accountable for conduct that was lawful when it occurred, but subsequently became unlawful due to a change in the law. This principle is reflected in various international treaties, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which prohibit the retrospective application of criminal laws and the imposition of retroactive penalties. However, there are some exceptions to this principle, such as when retroactivity is necessary to protect human rights or to give effect to a state's obligations under international law. Sometimes laws themselves may provide for their retroactive application; in which case the principle of non-retroactivity does not apply. There could be cases where the retroactive application of law may be necessary to protect human rights. Also the retroactive application of a law may be necessary to give effect to a state's international legal obligations. If a new treaty is ratified that requires certain conduct to be criminalized, a state may need to apply the new law retroactively to comply with its treaty obligations. These exceptions to the principle of non-retroactivity are

⁷³ van Sliedregt E. *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*. T.M.C. Asser Press. Hague 2003, p. 2-11.

generally narrowly construed and carefully applied to ensure that the rule of law is maintained, and the rights of individuals are protected.⁷⁴

2.1 Judiciary System

Rule of law is a fundamental principle that states that all individuals and institutions, including the government, are subject to and accountable to the law, which is fairly and impartially applied and enforced. It is a fundamental principle of many democratic societies and is essential for protecting the rights and freedoms of citizens. It also ensures that decisions are made in a predictable, transparent, and non-arbitrary manner. The rule of law and fair trial are closely related concepts. We can say that without fair trial there is no real concept of rule of law. The rule law ensures that all individuals, institutions, and governments are subject to the law and that is fairly and impartially applied and enforced. A fair trial, on the other hand, is a trial in which a person accused of a crime is given a fair and impartial hearing, in accordance with the law and with their rights protected. This includes the right to a fair and impartial judge, the right to legal representation, the right to be informed of the charges against them, and the right to a public hearing. Together, the rule of law and fair trial ensure that the justice system is fair and just, and the rights of citizens are protected.

The right to a fair trial includes a number of specific guarantees, such as the right to be informed of the charges against them in timely manner, the right to a public trial, the right to be represented by a lawyer, the right to remain silent and not incriminate oneself, the right to call witnesses and present evidence in one`s defense, the right to an impartial and independent judiciary and the right to appeal a conviction. The right to fair trial is essential for ensuring that justice is done and that individuals are not subject to arbitrary or unjustified punishment. It applies to all individuals, regardless of their background, and is considered to be non-derogable, meaning that it cannot be suspended or restricted, even in times of emergency or war.

⁷⁴ Robertson G. Crimes Against Humanity. The New Press. New York 2013, p. 121-130.

2.2 Examples of different court systems in international field

The Rome Statute of the International Criminal Court (ICC)⁷⁵ came into force on 1st of July 2002 after ratification by 60 countries.⁷⁶ The Rome Statute has been ratified by 123 states (2021).⁷⁷ ICC is not part of the United Nations system. It does, however, have a cooperative relationship with the United Nations. The ICC is a court of last resort. It means that the ICC will not take action against a person if the case is under investigation, or it is prosecuted by a national judicial system unless the proceedings in the national judicial system are not genuine. This principle is called the complementarity principle. The ICC can exercise its jurisdiction, in cases other than a referral by the UN Security Council, according to article 12, only when the crimes have occurred in a territory of a state who have ratified the statute or by the nationals of those states. According to article 5 of the Rome Statute, the ICC has jurisdiction to prosecute individuals for the war crimes, crimes against humanity and genocide committed on or after 1st of July 2002. In addition to these crimes, the ICC has jurisdiction with respect to the crime of aggression.⁷⁸ At the moment there are 31 cases on trial which concerns war crimes, 22 cases concern crimes against humanity and one genocide case.⁷⁹

After a modern international criminal tribunal was established in the 1990s there have also been new kinds of international courts which are referred to as special, hybrid or mixed courts. The main reason for the development of special courts was that they could more effective, cheaper, the court hearings are there where the crimes have taken place, no more legitimacy deficits or less then example in ICC, local justice system could be utilized and be more sovereign option for the states.⁸⁰

⁷⁵ Rome Statute of the International Criminal Court:
[RS-Eng.pdf \(icc-cpi.int\)](#)

⁷⁶ Ibid.

⁷⁷ The State Parties to the Rome Statute:
[The States Parties to the Rome Statute \(icc-cpi.int\)](#).

⁷⁸ Rome Statute of the International Criminal Court:
[RS-Eng.pdf \(icc-cpi.int\)](#).

⁷⁹ International Criminal Court Cases:
[cases | International Criminal Court \(icc-cpi.int\)](#)

⁸⁰ Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge University Press. Cambridge 2019, p. 173.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was an international criminal tribunal established by the United Nations Security Council in 1993 and at that time, there was no more Yugoslavia. Yugoslavia ceased to exist by January 1992.⁸¹ The ICTY had jurisdiction over crimes such as genocide, crimes against humanity, war crimes, including the recruitment and use of child soldiers. The ICTY was the first international criminal tribunal to be established since the International Military Tribunal at Nuremberg after World War II and it played an important role in the development of international criminal law. The ICTY indicted and tried several individuals for crimes committed during the conflicts in the former Yugoslavia, including the recruitment and use of child soldiers. Example Radoslav Brdjanin was convicted and sentenced to 35 years in prison for his role in the recruitment and use of child soldiers in Bosnia and Herzegovina.

Another exception was International Criminal Tribunal for Rwanda (ICTR) what we can describe as Ad Hoc International Criminal Tribunal. ICTR was established by the United Nations Security Council in 1994 and its main task was to prosecute individuals for serious violations of international humanitarian law committed in Rwanda during the Rwandan genocide, which took place in 1994. The ICTR had jurisdiction over crimes such as genocide, crimes against humanity, and war crimes, including the recruitment and use of child soldiers. The ICTR was established in response to the Rwandan genocide, which resulted in the deaths of an estimated 800,000 people, mainly members of the Tutsi ethnic group. The ICTR convicted several individuals for the recruitment and use of child soldiers, including Jean-Paul Akayesu, who was convicted and sentenced to life in prison for his role.⁸²

The Special Court for Sierra Leone was established in 2002 by an agreement between the government of Sierra Leone and United Nations. Courts main duty as an international tribunal was to try individuals who were committing the most serious crimes in times of Sierra Leone`s civil war between 1991-2002. The Special Court for Sierra Leone was the first international criminal tribunal to try individuals for the recruitment and use of child soldiers as a war crime. The Special Court convicted several individuals for the recruitment and use of child soldiers,

⁸¹ History about the breakup of Yugoslavia 1990-1992:

<https://history.state.gov/milestones/1989-1992/breakup-yugoslavia>

⁸² United Nations International Residual Mechanism for Criminal Tribunals:

<https://unictr.irmct.org/> and Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge University Press. Cambridge 2019, p. 137-143.

including former Liberian president Charles Taylor, who was convicted and sentenced to 50 years in prison for his role in the recruitment and use of child soldiers in Sierra Leone. Its legacy includes the establishment of a Truth and Reconciliation Commission, which was tasked with documenting the truth about the events of the Sierra Leonean conflict, and the Special Court's impact on the development of international criminal law, including its role in bringing attention to the issue of child soldiers.⁸³

Extraordinary Chambers in the Courts of Cambodia (ECCC) is a hybrid international and national court established to try individuals who were alleged to have committed serious crimes during the Khmer Rouge regime in Cambodia. The ECCC was established by an agreement between the government of Cambodia and the United Nations in 2003, with the mandate to try individuals who bore the greatest responsibility for serious violations of international humanitarian law and Cambodian law committed during the Khmer Rouge regime. The ECCC has tried several individuals for crimes committed during the Khmer Rouge regime, including the recruitment and use of child soldiers. The ECCC convicted Nuon Chea, a former Khmer Rouge leader, of crimes against humanity and sentenced him to life in prison for his role in the recruitment and use of child soldiers and other crimes. It has made important contributions to the development of international criminal law and has helped to bring justice for the victims of the Khmer Rouge regime.⁸⁴

African Criminal Court movement towards regionalization of international criminal court. In 2014 African Union adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights widely known by name Malabo Protocol. The Malabo Protocol expands the jurisdiction of the African Court beyond its original mandate as a court of human and people's right. This new Protocol allowed the African Court to try individuals for serious crimes committed on the African continent when cases are brought before the court by states, individuals, or NGO's. The Malabo Protocol is an important

⁸³ Cryer, Robinson, and Vasiliev. *An Introduction to International Criminal Law and Procedure*. Cambridge University Press. Cambridge 2019, p. 173-193. and Sierra Leone Truth and Reconciliation Commission: <https://www.sierraleonetr.com/>

⁸⁴ Cryer, Robinson, and Vasiliev. *An Introduction to International Criminal Law and Procedure*. Cambridge University Press. Cambridge 2019, p. 173-193. and Extraordinary Chambers in the Courts of Cambodia: <https://www.eccc.gov.kh/en>

development in the fight against impunity in Africa and is seen as a step towards the establishment of a regional criminal justice system on the African continent.⁸⁵

Special Criminal Court in the Central African Republic was established after negotiation with the Central African government and UN Multidimensional Integrated Stabilization Mission in the Central African Republic. This special court was established after violent conflict in Central African Republic which took place in 2012-2014 between Muslim insurgents and Christian militia groups. The court is composed by both national and international judges although it works in Central African Republic's judicial system. It also applies laws from domestic and also from international law systems. The court has jurisdiction over human rights violations which are defined by local penal code or by international law. The Special Criminal Court in the Central African Republic has authority over domestic courts in the area of its jurisdiction.⁸⁶

There are some issues that concern the use hybrid courts in international crimes. One of the biggest problems with the hybrid courts which are not established by UN support which usually means that court is established by a Security Council resolution, is the lack of support from an international organization to which all countries are committed. That could lead the situations where hybrid court is forced to try get some voluntary contracts with the States whose support is needed by the hybrid court. This could easily to lead a situation where enforcement becomes a problem.⁸⁷

There are a lot of other issues also that concerns hybrid courts, especially those which are lacking the Security Council's mandate. First of all, there can be a jurisdictional issue, there is no fully valid guideline as to which court falls within the jurisdiction of a certain international

⁸⁵ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights: <https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights> and Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge University Press. Cambridge 2019, p. 187-188.

⁸⁶ First Trial at the Special Criminal Court in the Central African Republic: <https://www.hrw.org/news/2022/04/12/central-african-republic-first-trial-special-criminal-court> and Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge University Press. Cambridge 2019, p. 197-198.

⁸⁷ Cryer, Robinson, and Vasiliev. An Introduction to International Criminal Law and Procedure. Cambridge University Press. Cambridge 2019, p. 198-201.

crime. As the cases often involve crimes committed in multiple countries or by individuals from different nations.

The second problem is that international hybrid courts usually have severe problems with lack of funding and resources. That could lead to the situation where the court is understaffed and that could lead to delays and inefficiencies in the judicial processes.

The third problem is political interference. There is a risk that political considerations will influence the proceedings of an international hybrid court, especially if the court is dependent on funding or support from a particular government or group of governments.

Fourth problem is fairness and impartiality. International hybrid courts may not provide defendants with a fair and impartial trial, due to the complex nature of the court's jurisdiction and potential political influence.

The fifth problem is the cooperation with the domestic courts. International hybrid courts may face challenges in working with domestic courts to bring suspects to trial, as well as in obtaining evidence and testimony from witnesses.

The sixth problem is legitimacy. There is a risk that international hybrid courts will be perceived as illegitimate by the local population, particularly if the court is seen as tool of foreign powers or as failing to deliver justice in a fair impartial manner.

The last main problem is complexity. International hybrid courts have complex procedures and rules of evidence which may be difficult for defendants, witnesses, and lawyers to navigate.⁸⁸

⁸⁸ Office of the United Nations High Commissioner for Human Rights, Rule of Law Tools for Post Conflict States: <https://www.ohchr.org/sites/default/files/Documents/Publications/HybridCourts.pdf>

2.3 Military Courts

Military courts are specialized judicial bodies that handle legal matters related to the armed forces. They typically have jurisdiction over cases involving military personnel, such as offenses committed under military law, as well as crimes committed by military personnel while on active duty. While in many cases military courts operations are extremely valid but there are cases where we can see problems with action of the military courts. One big problem is the difference between the procedures in civilian judicial system versus military judicial system. These differences can bring up many problematic questions, mainly in the field of due process and guarantees. Simplified this means that the civilian justice system aims to protect the rights of individuals and ensure that justice is served, while the military justice system aims to secure that the military operates effectively and efficiently.⁸⁹

In some cases, the problem is the independence of the military courts. That is because these courts are often closely tied to the military establishment and may be influenced by political considerations. There are also cases where military courts fairness and impartiality have been questionable. Courts may not provide defendants with a fair and impartial trial, as military judges and prosecutors may be more likely to side with the prosecution. The standard of the due process is seen problematic in some cases. It is because military courts often have different rules of evidence and procedure than in civilian courts. One of the biggest problems with the military courts is the defendants right to have civilian trial. Some of the defendants may be denied their right to a civilian trial and may be forced to face trial in military court. In some countries the problem with the military courts is the limited opportunity to appeal. If the appeal process is more limited it could easily result in a lack of oversight and accountability. Human rights violations in some countries and especially with military courts operations are quite a big problem nowadays. This occurs especially in cases related to political prisoners or with the individuals who are accused of terrorism.⁹⁰

⁸⁹ Liivoja R. *An Axiom of Military Law*. University of Helsinki. Helsinki 2011, p. 159-221.

⁹⁰ Report of the United Nations High Commissioner of Human Rights 29 JAN 2015:

https://www2.ohchr.org/english/OHCHRreport2015/allegati/Downloads/1_The_whole_Report_2015.pdf

International Law applicable in armed conflicts is also compiled in manuals published by different states for their armed forces. One of the most famous one is US Army's Field Code which often called as Lieber-Code and it has been of great importance in the compilation of humanitarian law. The first British law of war manual was introduced as early as 1884. Dr. Klemens Fischer prepared his own manual for the Austrian armed forces in 1991. The manual of the German armed forces is called in English The Handbook of Humanitarian Law in Armed Conflicts. The manual of the Swedish Armed Forces is from 2000 and it is called Folkrätt för totalförsvaret. En Handbok. First Finnish law of war manual is from 1923 and even current manuals rely heavily on it. Many other countries also have their own manuals related to armed conflicts. The predecessors of these can be considered war articles aimed at the armed forces, of which the most famous in terms of history of Finland and Sweden are Gustav II Adolf's war articles already from 1621.⁹¹

2.4 National Courts

There are three different forms of jurisdiction on how States regulate their lawmaking related to international law. First of all, we can talk about legislative jurisdiction. Legislative jurisdiction refers to the authority of a government or legislative body to make laws and regulations within certain geographic area or territory. This can include the power to create laws and regulations related to specific issues or areas, such as taxation, criminal law, or land use. Legislative jurisdiction can be defined by geographical boundaries, such as a city, state, or country, or by subject matter, such as environmental regulations or labor laws. In some cases, multiple levels of government may have concurrent legislative jurisdiction over the same area or issue.

Adjudicative jurisdiction refers to the authority of a court or other judicial body to hear and decide cases and disputes. This includes the power to interpret and apply laws, as well as to make binding decisions that are enforceable by law. Adjudicative jurisdiction is typically defined by geographic boundaries, such as state or federal court system, and by types of cases that a particular court is authorized to hear. For example, a criminal court would have

⁹¹ Rosen and Parkkari. *Sodan lait käsikirja*. Edita Publishing. Helsinki 2004, p. 29-31.

adjudicative jurisdiction over criminal cases, while a civil court would have adjudicative jurisdiction over civil cases. Adjudicative jurisdiction can also be divided between different levels of court, such as a trial court and an appellate court. one problem with adjudicative jurisdiction comes when local court is handling a case which had happened abroad. Especially if there is a judgement then the state where this conduct had happened can see it as an affront to their sovereignty.

Executive jurisdiction refers to the authority of the executive branch of government to enforce laws and regulations. This includes the power to execute, administer, and enforce laws and policies, as well as to make decisions and take actions that are necessary to carry out the functions. Examples of executive jurisdiction include the power to appoint officials, execute treaties, grant pardons and reprieves, and manage the day-to-day operations of government agencies. The head of executive jurisdiction also has the power to veto legislation passed by the legislative branch, and to issue executive orders and proclamations that have the force of law. Executive jurisdiction has some problematic areas especially when we are talking about international law. The basic rule is that a state cannot exercise executive jurisdiction in the area of another state without the host state`s acceptance. These executive jurisdiction problems have happened many times in the past and one of the most famous case is Adolf Eichmann`s capture from Argentina by Israeli soldiers. The question is that if the person is captured against basic rule from International Law does this mean that the future court session is unlawful. There is no clear answer to that but in many cases wrongly captured did not mean that whole court session became unlawful. Example Tribunal for the former Yugoslavia take the stand that wrongly captured did not meant that the court session would be unlawful.⁹²

Universal jurisdiction is one of the key concepts in international criminal law and as it is widely used it is also widely criticized. The basic idea is that national courts can exercise jurisdiction over certain crimes, regardless of where they were committed and also regardless of the nationality of the perpetrator or the victim. This jurisdiction is based on certain crimes, such as genocide, war crimes, torture, and crimes against humanity. Societies all over the world think that these crimes are so heinous that they threaten the international community as a whole, and therefore should be subject to prosecution by any state that is able and willing to do so.

⁹² Cryer, Robinson, and Vasiliev. *An Introduction to International Criminal Law and Procedure*. Cambridge University Press. Cambridge 2019, p. 49-51.

Two concepts closely related to the idea of universal jurisdiction. *Erga Omnes* which is a Latin term meaning towards all and it is widely used in the field of international law. It is used to describe the legal principle that certain rights and obligations are binding on all states and all individuals, regardless of whether they are parties to a particular treaty or agreement. *Erga Omnes* obligations are considered peremptory norms of general international law, which means that they are considered fundamental principles of the international legal order and cannot be disregarded or violated by any state. These obligations are considered to be of the highest order and binding on all states and individuals, irrespective of whether the state concerned is a party to the treaty which creates the norm.⁹³

The second concept or idea is *jus cogens* which is also a Latin phrase, and it means compelling law. This is principle of international law that refers to peremptory norms, which are considered to be fundamental and from which no deviation is permitted. These norms are of the highest order and binding on all states and individuals, regardless of whether the state concerned is a party to the treaty which creates the norm. Example *jus cogens* norms include the prohibition of genocide, slavery, the use of torture, and the protection of fundamental human rights such as the right to life, freedom from cruel, inhumane, or degrading treatment, and freedom of expression. *Jus cogens* norms are so fundamental to the international legal order that they cannot be modified or set aside by any agreement between states. They are considered to be higher law than other international legal rules and obligations and can override conflicting treaty provisions. *Jus cogens* norms have been recognized by the International Court of Justice (ICJ) and the International Criminal Court (ICC) as well as in the doctrine and practice of international law.

Usually, universal jurisdiction is divided into two different parts or concepts. These two concepts are absolute universal jurisdiction and conditional universal jurisdiction. Absolute universal jurisdiction means situation where state wants to use jurisdiction over an international crime while the suspected person or persons are not even within the state's boundaries. Conditional universal jurisdiction means the situation where the suspected person or persons

⁹³ de Than and Shorts. *International Criminal Law and Human Rights*. Sweet & Maxwell Limited. London 2003, p. 9-10.

are already inside the states boundaries where the state has the right to use the highest jurisdiction.⁹⁴

There has been quite a lot of critique against the idea of universal jurisdiction. Critics justify their position in the following ways. Political consideration is one of the key ideas for how to tackle the idea of universal jurisdiction. In some cases, states may be hesitant to exercise universal jurisdiction because of political or diplomatic considerations, such as the potential for strained relations with other states or the fear of retaliation. Problems with the cooperation could easily make universal jurisdictions idea very difficult to implement. Without cooperation from other states, it can be difficult for a state to exercise universal jurisdiction, as it may not have access to evidence or witnesses needed to prosecute the case. Also, different legal systems can form obstacles to applying the idea of universal jurisdiction. Different states may have different legal systems and procedures, which can make it difficult for them to prosecute cases under universal jurisdiction. Resources are always an important factor when we are talking about the realization of justice. States may lack the resources needed to investigate and prosecute cases under universal jurisdiction, especially if the cases are complex and involve multiple jurisdictions. Selective prosecution is very closely related to fair administration of justice. The principle of universal jurisdiction can be selectively applied, meaning that some countries may use it to prosecute certain crimes while ignoring others, raising questions of fairness and impartiality. There also may be unintended consequences with the principle. The universal jurisdiction may have unintended consequences, such as creating an incentive for states to avoid signing treaties or agreements that include universal jurisdiction provisions.⁹⁵

There has been a lot of talk about universal jurisdiction and the question is raised whether it is an entitlement or obligation, or could it be both. It seems that it really could be both for states. Entitlement in the sense that any state has the right to exercise jurisdiction over certain serious international crimes, even if they were committed outside its territory and by non-nationals. This is based on the principle that these crimes are so heinous that they threaten the international community as a whole, and therefore any state has the right to prosecute. It can also be an obligation, meaning that states are required under international law to investigate and prosecute certain crimes if they occur within their jurisdiction, or if the perpetrator is found within their

⁹⁴ Cryer, Robinson, and Vasiliev. *An Introduction to International Criminal Law and Procedure*. Cambridge University Press. Cambridge 2019, p. 56-58.

⁹⁵ Cryer, Robinson, and Vasiliev. *An Introduction to International Criminal Law and Procedure*. Cambridge University Press. Cambridge 2019, p. 58-68.

territory. For example, the Rome Statute of the International Criminal Court obligates states to investigate and prosecute genocide, war crimes, and crimes against humanity, if they occur within their territory, or if their national is suspected of committing such crimes.⁹⁶

Despite these concerns, many legal experts argue that universal jurisdiction is an important principle that helps to ensure accountability for the most serious international crimes and protect human rights. Yet we cannot say that there is some global convention that takes care of the whole idea of universal jurisdiction. But still if the different conventions leave states wide range of discretion, we can say that the pressure to administrate criminal justice in international community grows and in future we might see more administrative international legal system.⁹⁷

2.5 Dominic Ongwen Case at ICC

One of the most famous case about a child soldier who later became a commander in the same troops as he was abducted in when he was a child is a Dominic Ongwen case. Dominic Ongwen was a former Ugandan commander of the Lord`s Resistance Army (LRA). Ongwen was abducted and forced to become a child soldier himself before rising through the ranks of the LRA. He was accused of war crimes in the International Criminal Court and later found guilty of the charges and sentenced to 25 years of imprisonment.⁹⁸

The main question was about his history and what the abduction and forcing to be a child soldier had affected to him and also the question about the things that he had done before turning eighteen years of age. Under international law, individuals under the age of 18 are considered children and are entitled to special protection. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict prohibits the recruitment and use of children under 18 in armed conflicts. According to international law, a child soldier

⁹⁶ Bantekas and Oette. International Human Rights, Law and Practice. Cambridge University Press. Cambridge 2020, p. 761-765. and Rome Statute of the International Criminal Court:

<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

⁹⁷ Reydams L. Universal Jurisdiction. Oxford University Press. Oxford 2003, p. 11-27.

⁹⁸ International Criminal Court, Dominic Ongwen Case:

<https://www.icc-cpi.int/uganda/ongwen>

is any person under the age of 18 who is recruited or used by an armed group in any capacity, including as a fighter, porter, messenger, spy, or sex slave. This definition is recognized by the United Nations, the International Criminal Court Article 26⁹⁹, and other international bodies. The prosecution takes the stand that Ongwen committed the crimes after he turned eighteen years old. The defense's position was that Ongwen was a victim while he was abducted and forced to be child soldier and his victim status has never ended. This raised the question about victim-perpetrator status, but the court simply stated that Ongwen committed the crimes as an adult and a LRA leader.¹⁰⁰

The court case was quite controversial, and it has drawn a lot of criticism. The main part of the criticism is that Ongwen was abducted by the Lord's Resistance Army (LRA) at the age of 9 and was forced to become a child soldier. During his trial, the defense argued that he should not be held responsible for crimes he committed as a child soldier because he was under duress and lacked the capacity to make free and informed decisions. Some critics of the trial argue that Ongwen should have been given the opportunity to be rehabilitated and reintegrated into society instead of being prosecuted.

The ICC has been criticized for its selective approach to justice, with some arguing that it disproportionately targets African defendants and ignores crimes committed by Western nations. Some have argued that the Ongwen case is an example of this bias, as the LRA was primarily active in Uganda and neighboring countries. The ICC has also faced criticism for its jurisdictional limits, with some arguing that it lacks the authority to prosecute individuals who were not involved in conflicts between two or more states. The LRA was primarily active in Uganda, which was not engaged in an interstate conflict at the time. Some have argued that the Ongwen trial came too late, as the crimes he was accused of committing took place between 2002 and 2005. Critics argue that the delay in bringing Ongwen to trial meant that he was denied the opportunity to be held accountable for his crimes at a younger age and to benefit from rehabilitation and reintegration programs.¹⁰¹

⁹⁹ Rome Statute of the International Criminal Court:
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁰⁰ ICC-02/04-01/15, In the Case of the Prosecutor v. Dominic Ongwen:
https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_00169.PDF

¹⁰¹ International Criminal Court, Dominic Ongwen Case:
<https://www.icc-cpi.int/uganda/ongwen>

2.6 Omar Khadr Case in military commission

In 2010, Omar Khadr, a Canadian citizen who was captured by U.S. forces in Afghanistan when he was 15 years old and accused of killing a U.S. soldier, pleaded guilty to war crimes, and was sentenced to 8 years in prison. The Omar Khadr case is a controversial legal case involving a Canadian citizen who was captured by U.S. forces in Afghanistan when he was just 15 years old and held at Guantanamo Bay for over a decade. He was the first person since World War II to be accused in military commission about crimes that he had committed as a juvenile. He pleaded guilty to five charges, including murder, and was sentenced to eight years in prison. However, his conviction was later overturned by a Canadian court, which ruled that his confession was obtained through torture and that his rights had been violated.

The case has been controversial for several reasons. Some critics argue that Khadr was a child soldier who was forced into combat by his family and that he should have been treated as a victim of war rather than a criminal. Others have criticized the U.S. government for using military commissions, which have been criticized for lacking due process and for allowing evidence obtained through torture. The case has also been controversial in Canada, where Khadr's repatriation and subsequent settlement with the Canadian government have been criticized by some as being too lenient towards a convicted terrorist. However, others have argued that Khadr's rights were violated and that he deserves compensation for the mistreatment he suffered while in U.S. custody. The Omar Khadr case highlights the complexities of prosecuting individuals who were child soldiers or who were subject to human rights abuses, and the challenges of balancing justice with the need to protect the rights of vulnerable individuals.¹⁰²

2.7 Thomas Kwoyelo Case in International Crimes Division of the Ugandan High Court

Thomas Kwoyelo is a former rebel commander from Lord's Resistance Army (LRA) in Uganda. As a senior commander Kwoyelo was responsible for recruiting and training child soldiers to

¹⁰² Omar Khadr case:

<https://www.internationalcrimesdatabase.org/Case/968/Khadr/>

fight in the rebel group. Kwoyelo himself is reported to have been abducted by the LRA when he was a teenager, and he was then trained to become a rebel fighter. He later rose through the ranks and became a senior commander in the group. Kwoyelo was arrested in March 2009 by the Ugandan army, and he was charged with various crimes, including murder, rape, and abduction. His case is in the hands of the International Crimes Division of the Ugandan High Court. Kwoyelo asked in March 2022 for his case to be transferred to ICC, but the court would not accept his plea. After that there was no more info about his case. He has been in jail now for 14 years and still no judgement and trial is still pending.¹⁰³

These three cases described above tell us that while we are talking about child soldiers, it is not an easy task to do. First case International Criminal Court handle Dominic Ongwen case and the second case was about Omar Khadr case which was handled by military commission and third case was about Thomas Kwoyelo and his is still pending and handled by local court in Uganda called International Crimes Division of the Ugandan High Court. All of these three were child soldiers but Dominic Ongwen case was taken to International Criminal Court when Ongwen was already an adult. Omar Khadr was only fifteen when he was captured and convicted in a military commission. Thomas Kwoyelo was also an adult when he was captured but his case is still pending after 14 years.

In Ongwen case International Criminal Court did not set any age limit to what age persons can be sentenced for war crimes. The Court only ruled that they don't have any jurisdiction over crimes that are committed while the person was under eighteen years of age, this rule come from ICC Article 26.¹⁰⁴ So then the court only took into account accusations which happened after Ongwen's eighteenth birthday. Omar Khadr case was handled quite differently. Khadr was only fifteen while he was captured and accused of killing US soldier. Khadr pleaded guilty to war crimes and was sentenced to 8 years in prison. Ongwen and Khadr both were unlawful combatants, they were fighting with the groups that did not fulfil the conditions for combatant status, but they still were legitimate targets to an armed force.¹⁰⁵ Another important factor that we have notice about these two cases is the age limit. Ongwen case ICC did not handled

¹⁰³ <http://www.judiciary.go.ug/data/smnu/18/International%20Crimes%20Division.html>
and [LRA's Thomas Kwoyelo asks high court to transfer case to ICC for speedy trial \(independent.co.ug\)](http://www.independent.co.ug/news/uganda/lra-asks-high-court-to-transfer-case-to-icc-for-speedy-trial)

¹⁰⁴ Rome Statute of the International Criminal Court:
<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁰⁵ IHL Databases webpage:
https://casebook.icrc.org/a_to_z/glossary/unlawful-combatants

accusations which were happened before Ongwen was eighteen years of age. But in this another case military commission did not see any problem with Khadr age which was only fifteen at the time. This is one of the big problems regarding child soldiers. The third case is still pending, and the International Crimes Division of the Ugandan High Court has not yet commented the age matter.

International criminal law has not defined a minimum age for criminal responsibility, which in principle also enables minors to be tried and sentenced by International Criminal courts.¹⁰⁶ So far, no child soldiers have been convicted in international courts as minors, but former child soldiers have been convicted if they participated in the execution of war crimes even after turning eighteen years old. Convention on the Rights of the Child article 40¹⁰⁷ aims to ensure that the child gets the right to equal legal treatment, where this particularly vulnerable position and possible questions of responsibility are taken differently into account than compared to adult trials. Children`s trials should also be closed from public, and children should be offered as much protection as possible during the trial. Geneva Convention IV Article 68. states also that death penalty may not be pronounced against person who commit crimes at the time while she or he was under eighteen years of age.¹⁰⁸ As previously stated, according to international customary law and treaties, between the ages of 15 and 17 a participant in the battles is entitled to the status of legal combatant. Could the same age limit also work as a signpost of criminal liability in international criminal law? This is not a simple thing to answer. There has been a debate about the age limit but at the moment there is no limit which the whole international community would accept.

The doctrine of universal jurisdiction is a principle of international law that allows a state to assert jurisdiction over certain crimes, regardless of where they were committed or the nationality of the perpetrator or victim. This means that a state can prosecute an individual for a crime committed in another country, even if neither the perpetrator nor the victim has any connection to that state. The principle of universal jurisdiction applies to certain crimes that are

¹⁰⁶ Red Cross webpage about Children and Armed Conflict:

<https://www.punainenristi.fi/tyomme/humanitaarinen-oikeus/siviilien-suojelu/lapset-ja-sota/>

¹⁰⁷ United Nations Convention on the Rights of the Child:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁰⁸ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

considered to be so heinous that they are regarded as crimes against all of humanity, such as genocide, war crimes, crimes against humanity, piracy, and torture. These crimes are considered to be of such gravity that they offend the common interests of all states and require universal prosecution.¹⁰⁹ This brings us to the problematic zone with the child soldiers who are underage. There is no minimum age of criminal responsibility in international crimes, so any nation which takes jurisdiction over a child in these cases can apply its domestic minimum age of criminal responsibility. Example in Israel the minimum age of criminal responsibility is twelve years.¹¹⁰ So this could mean that a child thirteen years old who is suspected to take part in genocide and Israeli Court takes his case, means that Israeli court is forced to prosecute the child because they are signatory parties of this convention.¹¹¹ In theory this could lead to capital punishment. Genocide is one the reasons that you could get capital punishment in Israel.¹¹² So as we can see it is really alarming situation at the moment in international field who to prosecute a child soldier.¹¹³

This situation at the moment could lead to actual cases where a child could be prosecuted in one state and in another state he or she would not be prosecuted. Without an internationally defined and generally accepted minimum age of criminal responsibility in international criminal law, national courts have gained a lot of power in the matter. The problem here is the fact that in national courts the minimum age of criminal liability varies really drastically, or it does not exist at all. This has led to the fact that the children`s rights cannot be protected, and children, especially those aged 15-17 child soldiers, will be left truly defenseless before the national courts. Especially if you think the situation where a minor has taken part of a mass murder of certain ethnic group, he is captured and taken before the court where the opponents are the victims of this ethnic cleansing. The revenge mode in this case can lead to very harsh sentences, and there are even indications that minors have been sentenced to death on these grounds in

¹⁰⁹ St. John`s Law Review Volume 89 summer/fall 2015, Prosecuting Child Soldiers: The Call for an International Minimum Age of Criminal Responsibility by Brittany Ursini:

<https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6731&context=lawreview> p. 1023-1024.

¹¹⁰ Child Rights International Network Webpage, Minimum Ages of Criminal Responsibility in Asia:

<https://archive.crin.org/en/home/ages/asia.html>

¹¹¹ Convention on the Prevention and Punishment of the Crime of Genocide, signatories, and parties:

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4

¹¹² US Department of Justice webpage, Article about Capital Punishment in Israel:

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/capital-punishment-israel-prevention-crime-and-treatment-offenders>

¹¹³ St. John`s Law Review Volume 89 summer/fall 2015, Prosecuting Child Soldiers: The Call for an International Minimum Age of Criminal Responsibility by Brittany Ursini:

<https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6731&context=lawreview> p. 1024.

post conflict situations, example in the Congo.¹¹⁴ By setting the minimum age of criminal liability in international criminal law would be a move towards protecting the rights of children.

Another point that would support the minimum age limit for criminal liability under international criminal law, would be an effort to further strengthen the efforts of the international community to reduce participation of minors in armed conflicts. If minors are not subject to criminal responsibility, and therefore they would not be accused of war crimes in international criminal law, could this even increase the use of minors in the execution of serious war crimes. Ursin suggests in her study that the minimum age of international criminal responsibility should be fifteen years of age. This would be in line with both International Humanitarian law and International Human Rights Law that if a fifteen-year-old child is considered old enough to enlist in the armed forces or to an armed group and thus also participate in armed activities, this should also mean that the child is ready to take responsibility for his or her actions. This would also make it easier compliance with the separation principle, where clearly underage child soldiers would be separated from older child soldiers based on their legal status.¹¹⁵

¹¹⁴ St. John`s Law Review Volume 89 summer/fall 2015, Prosecuting Child Soldiers: The Call for an International Minimum Age of Criminal Responsibility by Brittany Ursini:
<https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6731&context=lawreview> p. 1023-1033.

¹¹⁵ St. John`s Law Review Volume 89 summer/fall 2015, Prosecuting Child Soldiers: The Call for an International Minimum Age of Criminal Responsibility by Brittany Ursini:
<https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6731&context=lawreview> p. 1033-1048.

3. PROBLEMS AND CONCERNS ABOUT CHILDREN WHO LIVE IN CONFLICT AREA

The United Nations had a Special Representative for Children and Armed Conflict, and this representative's mandate was established in the UN General Assembly in December 1996. This is an independent post to advocate for the rights and protection of children affected by armed conflict. The Special Representative of the Secretary General for Children and Armed Conflict works to ensure that the rights of the children are respected in situations of armed conflict, and that the international community takes action to protect children from violence, exploitation, and abuse. The Special Representative also works to promote the reintegration of child soldiers and other children affected by armed conflict into their communities, and to ensure that the needs of these children are taken into account in the planning and implementation of peacekeeping and other UN operations.¹¹⁶

Report of the Special Representative of the Secretary General for Children and Armed Conflict which was published on 27 July 2022 and covered the time period from August 2021 to July 2022 gives us valuable information regarding the status of child soldiers today.¹¹⁷

The report shows that almost 24 000 children were victims of recruitment, killing, maiming, rape, and abduction in 2021. From that group over 6300 children were recruited and used for part of the armed conflict. The biggest exploiter states were Democratic Republic of Congo, the Syrian Arab Republic, Somalia, and Mali.

Secretary General's report from 2021 on children and armed conflict tells many shocking facts about the matter.¹¹⁸ It is not one or two things how this phenomenon affects societies all over the world. Children and armed conflict are a major global issue that affects millions of children

¹¹⁶ Office of the Special Representative of the Secretary-General for Children and Armed Conflict: <https://childrenandarmedconflict.un.org/>

¹¹⁷ Report of the Special Representative of the Secretary General for Children and Armed Conflict July 2022: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/344/71/PDF/N2234471.pdf?OpenElement>

¹¹⁸ Children and Armed Conflict, Report of the Secretary-General 23 June 2022: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_493.pdf

every year. It refers to the use of children in any capacity in armed conflict, including as soldiers, sex slaves, and human shields. Children who are involved in armed conflict are exposed to extreme violence, physical and psychological trauma, and are often deprived of their basic rights, including the right to education and healthcare. The United Nations has been working to address this issue through various initiatives, including the creation of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict. Despite these efforts, children continue to be recruited and used in armed conflict around the world. It is essential for governments, civil society organizations, and the international community to work together to prevent the use of children in armed conflict and to ensure that their rights are protected.

Many armed groups around the world continue to recruit children into their ranks. Children may be abducted, forced, or voluntarily join armed groups due to poverty, lack of education, or ideological reasons. This can have severe consequences on their physical and psychological well-being. Children in armed conflict are often subjected to sexual violence and exploitation, including rape, and forced marriage. Girls are particularly vulnerable to these forms of abuse. Armed conflict can disrupt access to education and healthcare for children. Schools and hospitals are often targeted during armed conflict, putting children's lives at risk, and depriving them of essential services. Armed conflict can cause large-scale displacement of people, including children. Displaced children may face additional risks, including separation from their families, lack of access to basic needs such as food, shelter, and medical care, and exposure to violence and abuse.¹¹⁹

Over 19 000 children are affected by armed conflict. This includes recruitment and abduction, raping, killing, maiming and many other forms of violence. Over 20 000 grave violations, for example attacks on schools, hospitals, and denial of humanitarian access. At this report there are 24 countries which are currently in focus with this matter. almost 3000 children were detained because they were suspects of association with parties to conflict. Over 12 200 children were released from the control of armed groups by the help of UN. There was a 20 percent increase with abductions of children and also with sexual violence towards these children. 55 percent violations were committed by non-state actors, 25 percent by State actors

¹¹⁹ Children and Armed Conflict, Report of the Secretary-General 23 June 2022: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_493.pdf

and 15 percent of violations were unattributed usually accidents with landmines, crossfires between parties.¹²⁰

There has been an increase also with children who live in conflict zones.¹²¹ In the year 1990 a little bit over 200 million children lived in conflict zones. The amount has increased drastically and in the year 2017 over 400 million children were living in conflict zones. Almost 200 million of these children were living in Asia and over 150 million children were living in Africa. Almost 40 percent of children who live in the Middle East live in conflict zones. These numbers are incredible, especially when we are already living in 2020s.

3.1 Effectiveness of International Law and Human Rights Obligations

The official definition of child soldiers was agreed upon in 1997 in Cape Town as a result of the symposium. The results are known as the Cape Town Principles, and their purpose was to promote the prevention of the recruitment of children into armed forces or armed groups, child soldiers' evacuation from battlefields and facilitating the integration of disarmed child soldiers back to society.¹²² In connection to Cape town principles, Optional Protocol on the Involvement of Children in armed Conflict (OPAC) was also accepted.¹²³ The Paris Principles (Principles and Guidelines on Children Associated with Armed Forces or Armed Groups) were accepted in 2007.¹²⁴ Of the international agreements mentioned above, especially the newer agreements (Paris Principles and OPAC) strongly reinforce the child's role as a passive victim of armed conflicts and deny the child's role as a fighter.

¹²⁰ Ibid.

¹²¹ Stop the War on Children, Protecting Children in 21st Century Conflict:
https://resourcecentre.savethechildren.net/pdf/report_stop_the_war_on_children.pdf/

¹²² Cape Town Principles, 30 April 1997:
<https://openasia.org/en/wp-content/uploads/2013/06/Cape-Town-Principles.pdf>

¹²³ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

¹²⁴ The Paris Principles, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007:
<https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>

This idea of child as only a passive role or victim`s role is not the only truth while we talk about child soldiers. It is very important to understand child soldiers` other roles too and understand that there cannot be only one truth about this matter. A narrative of passive victim and active actor have been used in discussions about child soldiers throughout history. Could it be so that as times have changed, the active actor has become a passive victim?

So, the key issue or question is how to solve the problem with children and armed conflict. As already previously mentioned there are a lot of different problems of how armed conflicts affect children and it is not an easy task to solve these all. But if the international community could even ease these problems a little bit, it would have tremendous effect on children who live in war zones.

As I have gone through earlier in my thesis, international law and human rights obligations have been effective in protecting the rights of children during armed conflict to some extent, but there are still many challenges that need to be addressed.

One of the most significant developments in international law and human rights obligations related to the protection of children in armed conflict is the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.¹²⁵ This protocol requires states to raise the minimum age for voluntary recruitment into the military to 18 years and prohibits the compulsory recruitment of children under the age of 18. It also sets out measures for the protection and rehabilitation of child soldiers and requires states to take steps to prevent the recruitment and use of children in armed conflict.

Human rights obligations have also been effective in protecting the rights of children during armed conflict. The United Nations Security Council has adopted resolutions that call for the protection of children in armed conflict, including resolution 1612 from the year 2005, which established a monitoring and reporting mechanism on the use of child soldiers in conflict zones.

¹²⁵ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

¹²⁶ This was strongly highlighted, and it was considered that the reporting system in question must be completed as quickly as possible.

In addition, international criminal law has been used to hold individuals accountable for crimes against children committed during armed conflict. The International Criminal Court, for example, has prosecuted individuals for the recruitment of child soldiers, sexual violence against children, and other crimes committed against children during armed conflict.¹²⁷

The UN Guidelines for the Alternative Care of Children were developed by the United Nations to provide recommendations for the protection of children who are separated from their families or who cannot live with their families due to conflict, disaster, or other reasons. The guidelines were adopted by the UN General Assembly in 2009 and are intended to promote the best interests of the child, as well as to prevent the separation of children from their families whenever possible. The guidelines recognize that children who are living outside of their families are often at greater risk of violence, exploitation, and other forms of abuse, especially during times of armed conflict. They emphasize the importance of providing children with appropriate alternative care, such as foster care, kinship care, or adoption, rather than placing them in institutions or camps. The guidelines also highlight the need to ensure that alternative care arrangements are culturally appropriate, and that children's individual needs and preferences are taken into account. In the context of armed conflict, the guidelines call for measures to protect children who are displaced or who are separated from their families. These measures include ensuring that children are registered and that their whereabouts are known, facilitating family tracing and reunification, providing psychosocial support to help children cope with the trauma of displacement and separation and ensuring that alternative care arrangements are appropriate, and that children's rights are respected. Overall, the UN Guidelines for the Alternative Care of Children are an important tool for protecting the rights of children who are affected by armed conflict. By promoting alternative care arrangements that prioritize the best interests of the child and respect children's rights, these guidelines can

¹²⁶ Resolution 1612 (2005) / adopted by the Security Council at its 5235th meeting, on 26 July 2005: <https://digitallibrary.un.org/record/554197>

¹²⁷ International Criminal Court Cases: [cases | International Criminal Court \(icc-cpi.int\)](https://www.icc-cpi.int/cases)

help to prevent the further trauma and harm that can result from separation from family and community during times of conflict.¹²⁸

The Safe Schools Initiative is a joint initiative launched by the United Nations Special Envoy for Global Education, Gordon Brown, and the Nigerian government in 2014. The initiative was established in response to the kidnapping of over 200 schoolgirls by the extremist group Boko Haram in Chibok, Nigeria, in April 2014.¹²⁹ The Safe Schools initiative aims to improve the safety and security of schools, teachers, and students in conflict-affected countries. The initiative focuses on three main areas: protection, prevention, and education. It seeks to protect schools from attacks and violence, prevent such attacks from occurring in the first place, and ensure that children have access to safe and quality education. However, much more work remains to be done, especially in the face of ongoing insecurity and conflict in the region. The initiative serves as an important reminder of the critical role that education plays in promoting peace, stability, and prosperity in conflict-affected countries.

The International Labour Organization's Convention No. 182 requires states to take measures to eliminate the worst forms of child labor, which can include forced labor and recruitment into armed groups. By combating child labor, this convention can help prevent children from being exposed to the risks of armed conflict.¹³⁰ The International Labour Organization's Convention No. 182 is a landmark treaty that aims to eliminate the worst forms of child labor. It was adopted in 1999 and has been ratified by 190 countries, making it one of the most widely ratified human rights conventions in the world. The Convention defines the worst forms of child labor as including slavery, forced labor, and the use of children in armed conflict. In the context of armed conflict, Convention No. 182 is particularly relevant because it prohibits the recruitment or use of children under the age of 18 in hostilities. The Convention requires States Parties to take measures to prevent the recruitment and use of children in armed conflict, to demobilize and rehabilitate child soldiers, and to protect them from re-recruitment. The Convention recognizes that children are particularly vulnerable to being recruited into armed groups and

¹²⁸ General Assembly Resolution 64/142 24 February 2010 Guidelines for the Alternative Care of Children and an Introduction to the UN Guidelines for the Alternative Care of Children:

<https://resourcecentre.savethechildren.net/pdf/5416.pdf/> and
<https://www.futurelearn.com/info/courses/alternative-care/0/steps/29770>

¹²⁹ Global Coalition to Protect Education from Attack webpages:

<https://protectingeducation.org/about-us/>

¹³⁰ C182-Worst Forms of Child Labour Convention, 1999 (No. 182):

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

that their participation in hostilities constitutes one of the worst forms of child labor. The Convention also recognizes that the recruitment and use of child soldiers is a violation of international humanitarian law and human rights law.

The Guiding Principles on Business and Human Rights are a set of guidelines that outline the responsibilities of businesses with respect to human rights.¹³¹ The Guiding Principles were endorsed by the United Nations Human Rights Council in 2011 and have since become a widely recognized framework for corporate responsibility in the area of human rights. In the context of armed conflict, the Guiding Principles are particularly relevant because they emphasize the responsibility of businesses to respect human rights in conflict-affected areas. The principles state that businesses should avoid causing or contributing to human rights abuses in conflict-affected areas, and that they should take steps to ensure that their operations do not exacerbate existing conflicts or fuel new ones. The principles also emphasize that businesses have a responsibility to respect children's rights, including their right to be free from exploitation and abuse, and to take measures to prevent and mitigate the impact of armed conflict on children. Businesses have a responsibility to ensure that their operations do not contribute to or exacerbate the use of child soldiers. This may include ensuring that their supply chains are free from the use of child labor and taking steps to monitor and address any potential risks of child recruitment in conflict-affected areas. In addition, businesses can play a role in promoting the protection and well-being of children affected by armed conflict. This may include supporting local efforts to provide education, health care, and other essential services to children and their families, and engaging with local communities and stakeholders to promote respect for children's rights. The Guiding Principles also recognize that children may be particularly vulnerable to human rights abuses in conflict-affected areas and call on businesses to take measures to prevent and mitigate these risks. This may include providing support for the demobilization and reintegration of child soldiers and working to address the root causes of child recruitment and exploitation in conflict-affected areas.¹³²

¹³¹ Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework:

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹³² Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework:

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

However, despite these legal frameworks, the rights of children in armed conflict continue to be violated. Children are still recruited and used as soldiers, subjected to sexual violence, and targeted in attacks. Many children are also displaced from their homes and separated from their families, which can have long-term effects on their physical and mental health.¹³³ One of the main challenges is ensuring that these legal frameworks are implemented and enforced effectively. Many countries lack the resources and capacity to protect the rights of children during armed conflict, and some states have failed to ratify the relevant international treaties and protocols. Additionally, armed groups often operate outside the law, making it difficult to hold them accountable for violations against children.¹³⁴ Overall, while international law and human rights obligations have made progress in protecting the rights of children during armed conflict, there is still much work to be done to ensure that these protections are effective and enforced.

3.2 Way Forward, What We Develop and How?

While this is an international law thesis, I think it is very important to notice some social factors behind the unrest and armed conflict. Poverty is one thing that the international community should be able to solve even partially because without that I cannot see that armed conflicts and as a result of that children`s situation in conflict zones could become any better.

Poverty is one of the key factors which could lead to war or armed conflict. The basic idea behind this is a situation where a large group of the population lives in poverty, they may lack access to basic necessities such as food, water, healthcare, and education. This can create a sense of frustration and hopelessness, and lead to social unrest and political instability.

¹³³ Children and Armed Conflict, Report of the Secretary-General 23 June 2022: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_493.pdf

¹³⁴ Children and Armed Conflict, Report of the Secretary-General 23 June 2022: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_493.pdf

Some cases, poverty can also fuel the rise of extremist groups that use violence as a means to achieve their goals. These groups may recruit individuals, for example children, who are desperate for economic opportunities and use them as foot soldiers in their conflicts.

Additionally, poverty can exacerbate existing ethnic, religious, or political tensions, leading to violence and armed conflict. Scarce resources can become a source of competition and conflict, as groups may fight over land, water, or other valuable resources.

Furthermore, poverty can create a power imbalance between different groups within a society, with wealthy elites often controlling the majority of resources and political power. This can lead to a sense of disenfranchisement and marginalization among those who live in poverty, which can fuel social and political unrest.

Overall, poverty can create a complex set of factors that contribute to the outbreak of war, including economic desperation, political instability, and social unrest. Addressing poverty and inequality can therefore be an important step towards promoting peace and stability in societies.

So, what international community should do so that protection of the children in armed conflict would in better shape than it is now. It is not an easy task to solve, it is a complex and challenging issue that requires a multifaceted approach. Next, I will go through some development proposals that could make the situation at least a little better.

One of the key issues is to strengthen International Law. Ensuring that it provides adequate protection for children in armed conflict. States should ratify and implement the relevant international legal instruments, and also remember monitoring. Prevention of recruitment is vital, and additionally efforts should be made to address the root causes of recruitment, including poverty, lack of education, and discrimination. The UN and other relevant organizations should establish effective monitoring and reporting mechanisms to ensure that violations against children in armed conflicts are documented and addressed. There are already different kinds of monitoring systems but there is still a lack of monitoring and documenting in

the international community. If it would be effective and accurate it could help to accountability for those responsible for violations.

National institutions' work must be made better. Example effective national justice system and child protection system is vital if we want to ensure that they are able to effectively protect children's right during armed conflict. Education and awareness campaigns can play a crucial role in promoting respect for children's rights during armed conflict. These campaigns can target different audiences, including children, parents, and armed forces, to increase understanding of the rights of children and the obligations of states and non-state actors.

Perpetrators of crimes against children during armed conflict should be held accountable through international criminal justice mechanisms, such as the International Criminal Court. However, the matter is made even more complicated by the cases where the perpetrators of war crimes are minor children. One really important thing is rehabilitation and reintegration programs for the children who have been affected by armed conflict, and especially those who have been recruited into armed groups. They should be provided with necessary support for their rehabilitation and reintegration into their communities.

The international community should provide humanitarian assistance to children and their families affected by armed conflict. This can include access to basic necessities such as food, water, and shelter, as well as medical care and psychosocial support. Specific protection measures should be put in place for children during armed conflicts, such as the creation of child-friendly spaces in refugee camps and temporary shelters, and the provision of safe routes to school.

Demobilization and Reintegration programs should be developed and implemented to support the reintegration of former child soldiers into their communities. These programs should include access to education, vocational training, and counseling services. Also, psychosocial services are needed.

Advocacy and public awareness campaigns can be used to raise awareness about the impact of armed conflict on children and to advocate for stronger protection measures. This can include the use of social media, traditional media, and community outreach programs.

Justice system should be designed to be child-friendly, providing age-appropriate processes and procedures for children who are witnesses or victims of crimes committed during armed conflict. This can include the provision of legal aid and support services, and the protection children`s privacy and confidentiality. Children who are detained during armed conflict should be protected from abuse and mistreatment. This can be achieved by ensuring that detention facilities are safe, providing access to legal representation and support services, and monitoring detention conditions.

International cooperation is crucial in protecting children`s rights during armed conflict. The international community should work together to share best practices, coordinate efforts, and ensure that the protection of children is prioritized in all humanitarian and peacekeeping interventions. States should be held accountable for any violations of international law that occur during armed conflict.

Children should be empowered to participate in decision making processes that affect them. This can include the provision of education and training on their rights. Governments, armed forces, and non-state actors should receive training and capacity building on child rights and protection in armed conflict. This can help them to better understand their obligations under international law and to implement measures to protect children. Early warning and response mechanisms can be established to detect and response to threats to children`s rights during armed conflict. Children`s right to education must be protected during armed conflict. This can be achieved by providing safe access to schools, ensuring that schools are not targeted during military operations, and providing temporary learning spaces in refugee camps and other locations.

The measures should be implemented in a coordinated and sustained manner, with the participation of all relevant stakeholders, to have meaningful impact in protecting the rights of children before, during and after armed conflict.

CONCLUSION

In my thesis my objective was to find out to what extent have international law and human rights obligations been effective in protecting the rights of children during armed conflict. What measures can be taken to enhance the implementation and enforcement of international law and human rights obligations for the protection of children`s rights during armed conflict? What are the main obstacles to implementing and enforcement of international law? Should the laws change somehow so that there would be clearer legal status for child soldiers? And is the law really sufficient enough when we are talking about child soldiers and their position?

While analyzing my material and literature I managed to find out answers to my questions that I placed at the beginning of my thesis.

Children and armed conflict are a complex and devastating issue that affects millions of children around the world. Children are often forced to become soldiers, porters, spies, and even sex slaves during armed conflicts, and they are exposed to violence, abuse, and trauma that can have long-lasting physical, emotional, and psychological effects.

The United Nations has made significant efforts to address this issue through various mechanisms, including the establishment of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the creation of the Children and Armed Conflict Agenda.

While progress has been made in protecting children in armed conflict, much more needs to be done to ensure that all children are protected from the devastating effects of war. Governments, international organizations, and civil society must work together to prevent the recruitment and use of children in armed conflict, provide support and protection to children affected by armed conflict, and hold accountable those who commit grave violations against children in times of war.

It is important to remember that children are not just passive victims of armed conflict but are also agents of change and can play an active role in building peace and promoting human rights. By listening to their voices and involving them in decision making processes, we can create a better future for all children affected by armed conflict.

Children affected by armed conflict face a range of challenges that go beyond the immediate physical dangers they face. Many are forced to flee their homes, schools, and communities, and are separated from their families and support systems. They may also suffer from malnutrition, lack of access to healthcare, and loss of education and other opportunities.

Moreover, the effects of armed conflict on children can have long-term consequences, such as increased rate of poverty, unemployment, and social exclusion, as well as higher risk of mental health disorders, substance abuse, and violence. These impacts can not only affect individual children but also have broader societal and economic implications.

Efforts to address children and armed conflict must therefore take a comprehensive approach that addresses not only the immediate protection needs of children but also the longer-term effect of conflict on their lives. This includes providing access to education, healthcare, and other essential services, as well as creating opportunities for children to participate in peacebuilding and social development activities.

In addition, addressing the root causes of armed conflict, such as poverty, inequality, and political instability, is crucial to preventing the recruitment and use of children in conflict and promoting sustainable peace and development. This requires a concerted effort by governments, civil society, and the international community to address the structural factors that contribute to conflict and to build inclusive democratic, and equitable societies that prioritize the rights and well-being of all children.

One of the key challenges in addressing children and armed conflict is the lack of reliable data and information. Many conflicts take place in remote or inaccessible areas, and children may

be particularly vulnerable to underreporting and visibility due to their age and gender. As a result, it is often difficult to assess the scope and nature of the problem and to design effective responses.

To address this challenge, it is important to strengthen monitoring and reporting mechanisms that can collect and analyze data on the impact of armed conflict on children. This includes working with local communities, civil society organizations, and other stakeholders identifying and documenting violations against children, as well as supporting the development of reliable and consistent data collection and reporting system.

Another important aspect of addressing children and armed conflict is to ensure that perpetrators of violations against children are held accountable for their actions. This includes supporting the work of international and national criminal justice systems to investigate and prosecute those who commit crimes against children, as well as providing support and protection to child victims and witnesses.

It is also vital to recognize the role of the children themselves in promoting peace and protecting their rights in times of conflict. This includes providing opportunities for children to participate in decision-making processes, promoting their access to education, other essential services, and supporting their efforts to build networks and alliances across ethnic, religious, and other divides.

One big problem which came up while I was researching the topic was child soldiers and their prosecution of war crimes. International law defines a child as anyone under the age 18, and the use of children under the age of 15 as soldiers in armed conflict is considered a war crime. However, in some contexts, it may be difficult to determine the exact age of child soldiers, as birth registration systems may be weak or nonexistent. There may be cases where children who are above the age of 15 but below 18 are recruited and used as soldiers, which raises questions about their culpability and accountability for war crimes. In these cases, it is important to take into account the fact that children who are recruited and used as soldiers may have been subjected to coercion, threats, and other forms of abuse, which can affect their decision-making and make it difficult to hold them fully responsible for their actions. While we are talking about

these cases, it is important to take a holistic approach that considers the individual circumstances of each case. Ultimately, the goal should be to protect the rights and well-being of all children affected by armed conflict, while ensuring that those responsible for their recruitment and use as combatants are held accountable for their actions.

There is also one other aspect which relates to the prosecution and conviction of child soldiers. The age of child soldiers is also relevant to the concept of universal jurisdiction, which refers to the ability of national courts to prosecute individuals for certain crimes, regardless of where the crimes were committed or the nationality of the accused. When it comes to the prosecution of child soldiers under universal jurisdiction, the age of the individual can be a complicated factor. There may be a need to consider the degree of coercion or duress involved in their recruitment, as well as the individual circumstances of the case, in order to determine whether they should be held responsible for any crimes committed. In this connection it is important to notice the minimum age of criminal responsibility (MACR). MACR varies among different countries and ranges basically from 7 to 18 years old. If the child soldier is below MACR, then they cannot be prosecuted for their actions but if the child is above MACR, then the individual circumstances of the case should be taken into account. This is important fact because national courts can prosecute child soldiers under universal jurisdiction concept, and while the MACR changes between countries, this could lead situation where child soldier could prosecute in one country but same crime in a another the child soldier cannot be prosecuted. This is simply an unsustainable situation for children's rights.

However, despite these legal frameworks, the rights of children in armed conflict continue to be violated. Children are still recruited and used as soldiers, subjected to sexual violence, and targeted in attacks. Many children are also displaced from their homes and separated from their families, which can have long-term effects on their physical and mental health.¹³⁵

One of the main challenges is ensuring that these legal frameworks are implemented and enforced effectively. Many countries lack the resources and capacity to protect the rights of children during armed conflict, and some states have failed to ratify the relevant international

¹³⁵ Children and Armed Conflict, Report of the Secretary-General 23 June 2022: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_493.pdf

treaties and protocols. Additionally, armed groups often operate outside the law, making it difficult to hold them accountable for violations against children.¹³⁶ Overall, while international law and human rights obligations have made progress in protecting the rights of children during armed conflict, there is still much work to be done to ensure that these protections are effective and enforced.

¹³⁶Children and Armed Conflict, Report of the Secretary-General 23 June 2022: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_493.pdf

Minu käesoleva lõputöö eesmärk on välja selgitada, mil määral on rahvusvaheline õigus ja inimõigustega seotud kohustused olnud tõhusad laste õiguste kaitsmisel relvakonfliktide ajal.

Lõputöö eesmärgi saavutamiseks uurin argumente läbi õiguslike raamistike puudutavate õigusuuringute, mõningate juhtumiuuringute ja uurin teaduskirjandust. Läbin ka minu õppetööga seotud rahvusvahelise õiguse konventsioone ja lepinguid. Peamiselt hõlmavad minu juriidilised allikad raamatuid, akadeemilisi ajakirju, andmebaase ja ametlikke veebisaite.

Minu uurimisteema põhineb põhi- ja inimõiguste kaitsel ning inimõiguste kaitse ja piiramise vahekorra tõlgendamisel relvakonflikti ajal. See tähendab, et minu õpe on osa rahvusvahelisest õigusest ja täpsemalt rahvusvahelisest humanitaarõigusest, mis on osa rahvusvahelisest avalikust õigusest. Uurimisküsimused on järgmised; Milliseid meetmeid saab võtta, et tõhustada rahvusvahelise õiguse ja inimõigustega seotud kohustuste rakendamist ja jõustamist laste õiguste kaitseks relvakonflikti ajal? Millised on peamised takistused rahvusvahelise õiguse rakendamisel ja jõustamisel? Kas seadused peaksid kuidagi muutuma, et lapssõdurite õiguslik staatus oleks selgem? Ja kas seadus on tõesti piisav, kui me räägime lapssõduritest ja nende positsioonist?

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